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A

MANUAL OF PRACTICE

IN THE COURTS OF THE

UNITED STATES.

Embracing the Provisions of the Constitution, the Revised Statutes and Amendments thereto relating to Federal Courts, together with the Rules promulgated by the Supreme Court of the United States.

WITH NOTES OF DECISIONS.

BY

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NINTH EDITION.

Revised and brought to date, with the addition of the Rules of the Circuit Courts of Appeals, the Bankruptcy Act, and General Orders in Bankruptcy.

BY

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TOGETHER WITH A VOLUME OF FORMS,

Adapted and Referring to this Manual.

BY

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THE WHOLE IN FOUR VOLUMES.

VOL. III.

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RULES.

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RULES

OF THE

SUPREME COURT OF THE UNITED STATES.

RULE 1. CLERK.

1. **Office, where.**—The clerk of this court shall reside and keep the office at the seat of the national government, and he shall not practice either as attorney or counselor in this court or in any other court while he shall continue to be clerk of this court.

Original Rule 1, promulgated February 3, 1790; 1 Cranch, xvi; 1 Wheat. xiii; 1 Peters, v. Revised and corrected December Term, 1858, 21 How. v.

2. **Duties.**—The clerk shall not permit any original record or paper to be taken from the courtroom, or from the office without an order from the court, except as provided by Rule 10.

Original Rule 12, promulgated August 7, 1797, 1 Cranch, xviii; 1 Wheat. xv; 1 Peters, vii. Revised and corrected at December Term, 1858, 21 How. v. Amendment promulgated November 13, 1882, 16 Otto, vii.

RULE 2. ATTORNEYS.

1. Admission of.—It shall be requisite to the admission of attorneys or counselors to practice in this court that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

Original Rule 2, promulgated February 5, 1790, 2 Dall. 399; 1 Cranch, xvi; 1 Wheat. xiii; 1 Peters, vi. Revised and corrected December Term, 1858, 21 How. v.

Admission and removal of.—Court has exclusive power to determine qualifications for attorneys and counselors (Ex parte Secombe, 19 How. 13); but can only disbar them for moral or professional delinquency. (Ex parte Tillinghast, 4 Peters, 108; Ex parte Garland, 4 Wall. 333; Ex parte Robinson, 19 Wall. 513; Ex parte Wall, 107 U. S. 265; U. S. v. Costen, 38 Fed. Rep. 24; Re Thomas, 36 Fed. Rep. 242; Re Boone, 83 Fed. Rep. 944.) The Federal courts sitting in a State should disbar an attorney whose license has been revoked by the supreme court of the State. (United States v. Green, 85 Fed. Rep. 857.)

2. Oath.—They shall respectively take and subscribe the following oath or affirmation, viz:

I, ———, do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, uprightly and according to law, and that I will support the Constitution of the United States.

Original Rule 6, promulgated February 7, 1791, 2 Dall. 399; 1 Cranch, xvii; 1 Wheat. xiv; 1 Peters, vi.

Revised and corrected December Term, 1858, 21 How. v.

Original Rules 3 and 4, promulgated February 5, 1790, 1 Cranch, xvi; 1 Wheat. xiii; and 1 Peters, vi; and Rule 14, 1 Cranch, xviii; 1 Wheat. xvi; and 1 Peters, vii; promulgated August 12, 1801, relative to distinguishing attorneys from counselors, abrogated on revision and correction at December Term, 1858, 21 How. v.

Amendment to the second clause, promulgated March 10, 1865, 2 Wall. vii, pursuant to act of Congress, 12 Stat. at Large, 502. Declared unconstitutional, Ex parte Garland, 4 Wall. 333. Was rescinded at the December Term, 1866, 4 Wall. vii.

RULE 3. PRACTICE.

How regulated.—This court considers the former practice of the courts of king's bench and of chancery in England as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

Original Rule 7, promulgated August 8, 1791, 1 Cranch, xvii; 2 Dall. 411; 1 Wheat. xiv; 1 Peters, vi. Revised and corrected at December Term, 1858, 21 How. v.

Procedure.—Proceedings of this court, regulated by rules analogous to the English chancery practice. Florida v. Georgia, 17 How. 478.) The English rules are not adopted (Brown v. Aspden, 14 How. 25); but must be followed where appropriate. (Rhode Island v. Massachusetts, 12 Peters, 735.) Where inconsistent or unjust, they will not be followed. (Florida v. Georgia, 17 How. 478; Rhode Island v. Massachusetts, 14 Peters, 210.)

RULE 4. BILL OF EXCEPTIONS.

Allowance of.—The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts, and those matters of law, and those only, shall be inserted in the bill of exceptions, and allowed by the court.

Original Rule 8, promulgated February 4, 1795, 1 Cranch, xvii; 1 Wheat. xiv; 1 Peters, vi. Revised and corrected December Term, 1858, 21 How. vi.

Form of.—The charge of the court, at length, cannot be brought here for review (Carver v. Astor, 4 Peters, 1); the practice of so doing is censured (Stimpson v. West Chester R. R. Co., 4 How. 380; Rogers v. The Marshal, 1 Wall. 644); a mistake of law would be ground for an exception (Lincoln v. Claflin, 7 Wall. 132), which should be strictly confined to that mistake (Railroad Co. v. Varnell, 8 Otto, 479), and should be specifically set out in the record. (Harvey v. Tyler, 2 Wall. 328; Insurance Co. v. Sea, 21 Wall. 158; Beaver v. Taylor, 3 Otto, 46; U. S. v. Rinskopf, 15 Otto, 418; Johnston v. Jones, 1 Black, 209.) In trials without juries the whole testimony cannot be brought up for review. (Norris v. Jackson, 9 Wall. 125; Evans v. Patterson, 4 Wall. 224.) Rulings of the court as to admission of evidence only can be brought here. (Suydam v. Williamson, 20 How. 427; Kearney v. Denn, 15 Wall. 56.) Exceptions to the exclusion of proper testimony are properly in the record (Arthurs v. Hart, 17 How. 6); but exceptions to the admission

of improper testimony should be omitted. (Weems v. George, 13 How. 190.) The exception should state specifically the evidence objected to (Elliot v. Piersol, 1 Peters, 328; Vasse v. Smith, 6 Cranch, 226; Camden v. Doremus, 3 How. 515; Zeller v. Eckert, 4 How. 289); and only so much of it as necessary to properly present the rulings excepted to. (Zeller v. Eckert, 4 How. 289; Moore v. Bank of Metropolis, 13 Peters, 302; Lees v. United States, 150 U. S. 476.) The bill of exceptions is conclusive on the court (Bingham v. Cabbot, 3 Dall. 19), and they cannot presume that any material part is omitted (U. S. v. Hodge, 6 How. 279); and alleged errors not appearing on the face of the record will not be examined. (Storm v. U. S., 4 Otto, 76; Kerr v. Clampet, 5 Otto, 188.) But if, from an imperfectly drawn bill, it can ascertain the substance, it will decide the case (U. S. v. Morgan, 11 How. 154); but will not go outside of the record to find matter to support it. (Clarke v. Russel, 3 Dall. 423; Reed v. Gardener, 17 Wall. 409; Mut. L. I. Co. v. Snyder, 3 Otto, 393.) The bill need not be formally completed at the trial (Walton v. U. S., 9 Wheat. 651); but the exceptions may be noted at the trial, and afterward reduced to form. (Ex parte Bradstreet, 4 Peters, 102; Brown v. Clark, 4 How. 4; Pennock v. Dialogue, 2 Peters, 1; Carver v. Astor, 4 Peters, 80; Phelps v. Mayer, 15 How. 160, Lathrop v. Judson, 19 How. 66; French v. Edward, 13 Wall. 506; Stanton v. Embrey, 3 Otto, 548.) By the signature and seal of the judge all the matters stated in the bill are brought into the record for all purposes. (Lees v. United States, 150 U. S. 476.) They must be signed by the judge (Genres v. Campbell, 11 Wall. 193), at the term (Hunnicutt v. Peyton, 12 Otto, 333; Gregg v. Sayre, 8 Peters, 244; Magniac v. Thompson, 7 Peters, 348); or during a time specified in an express order of the judge made during the term (Ward v. Cochran, 150 U. S. 597); and

if, afterward, signing should be nunc pro tunc (Walton v. U. S., 9 Wheat. 651; Insurance Co. v. Boon, 5 Otto, 117); or they will constitute no part of the record. (Young v. Martin, 8 Wall. 354; Mussina v. Cavazos, 6 Wall. 356; Pomeroy v. State Bank, 1 Wall. 592; United States v. Jones, 149 U. S. 262.) A bill of exceptions is sufficient when it specifies distinctly the parts of the charge excepted to and the legal propositions to which exceptions are taken. (Ward v. Cochran, 150 U. S. 597.) Exceptions to the charge must be taken or assignments of error will not be considered. (Lindsay v. Burgess, 156 U. S. 208.) The bill of exceptions cannot be used to bring up the whole testimony for review. (City of St. Louis v. Western U. Ry. Co., 166 U. S. 388.) A general exception taken to the refusal of a series of instructions will not be considered if any one of the propositions is unsound (Union Pac. Ry. Co. v. Callaghan, 161 U. S. 91); and a general exception to a series of instructions given is not sufficient. (Clune v. United States, 159 U. S. 590.) Where the bill of exceptions has not been seasonably allowed, the judgment of the court below will be affirmed by the supreme court. (Morse v. Anderson, 150 U. S. 156.)

RULE 5. PROCESS.

1. In name of U. S.—All process of this court shall be in the name of the President of the United States.

Original Rule 5, promulgated February 5, 1790, 1 Cranch, xvi; 2 Dall. 399; 1 Wheat. xiv; 1 Peters, vi. Revised and corrected December Term, 1858, 21 How. vi.

2. Service on State.—When process at common law, or in equity, shall issue against a State, the

same shall be served on the governor, or chief executive magistrate, and attorney-general, of such State.

Original Rule 10, promulgated August 12, 1796, 3 Peters, xvii; 3 Dall. 320. Adopted on revision December Term, 1858, 21 How. vi.

How made.—This court has original jurisdiction in suits against States (New Jersey v. New York, 5 Peters, 284); and fixes the rule respecting process in those suits. (Grayson v. Virginia, 3 Dall. 320; S. C. 1 Pet. Cond. 141.) Process should be directed to the State. (Florida v. Georgia, 11 How. 293; Rhode Island v. Massachusetts, 7 Peters, 651.) Service must be on governor and attorney general. Service on one of them is not sufficient. (New Jersey v. New York, 3 Peters, 461.)

3. Subpoena, when served.—Process of subpoena, issuing out of this court in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed ex parte.

Original Rule 10, promulgated August 12, 1796, 1 Cranch, xvii; 3 Dall. 320; 1 Wheat. xv; 1 Peters, vi. Revised and corrected December Term, 1858, 21 How. vi.

Rule followed. (New Jersey v. New York, 5 Peters, 284; S. C. 3 Peters, 461.)

RULE 6. MOTIONS.

1. To be in writing.—All motions to the court shall be reduced to writing, and shall contain a

brief statement of the facts and objects of the motion.

2. **Time allowed.**—One hour on each side shall be allowed to the argument of a motion and no more, without special leave of the court granted before the argument begins.

Original Rule 51, promulgated January Term, 1838, 12 Peters, iv. Adopted on revision December Term, 1858, 21 How. vi. Amended December 18, 1876, 3 Otto, vii. See Butler v. Gage, 138 U. S. 52.

3. **Notice requisite.**—No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

Original Rule 31, promulgated December Term, 1867, 6 Wall. v. Revised and corrected December Term, 1870.

4. **When to be submitted.**—All motions to dismiss writs of error and appeals,, except motions to docket and dismiss under Rule 9, submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve a notice of the motion, with a copy of his brief or argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases, except where the counsel to be notified resides west of the Rocky

Mountains, in which case the notice shall be at least thirty days.

Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless for satisfactory reasons further time be given by the court to either party.

Promulgated May 6, 1872, 13 Wall. xi.

5. Motion to affirm.—There may be united with a motion to dismiss a writ of error or an appeal a motion to affirm, on the ground that although the record may show that this court has jurisdiction it is manifest the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

Promulgated May 6, 1872, 13 Wall. xi. Amended May 8, 1876, 1 Otto, vii; November 4, 1878, 7 Otto, vii, clause 3.

Note.—See construction of a similar rule. (Dzialynski v. Bank of Jacksonville, 23 Fla. 45; Whitney v. Cook, 99 U. S. 607.) A motion to dismiss a case for want of jurisdiction may be united with a motion to affirm. (Foster v. Kansas, 112 U. S. 205.)

To dismiss and affirm.—Where record is not printed, motion to dismiss will not be considered. (National Bank v. Insurance Co., 10 Otto, 43.) But only

so much of record need be printed as will enable the court to act understandingly without reference to the transcript. (Carey v. The Houston & T. C. Ry. Co., 150 U. S. 170.) Motion will be entertained before return day, if court clearly has no jurisdiction. (Clark v. Hancock, 4 Otto, 493; Ex parte Russell, 13 Wall. 671; Thomas v. Woolridge, 23 Wall. 288.) Oral argument is not allowed on motions to dismiss. (Carey v. Houston & T. Cent. Ry. Co., 150 U. S. 170.) Party cannot complain that he had no notice of the motion, if he file a brief on its merits. (Thomas v. Woolridge, 23 Wall. 288.) A motion to affirm will be denied if motion to dismiss cannot be sustained, the court clearly having jurisdiction (Whitney v. Cook, 9 Otto, 607); but in such case the motion to affirm will be granted; if writ taken for delay only (Micas v. Williams, 14 Otto, 556; The S. C. Tryon, 15 Otto, 267), or the questions of law have already been decided here. (Swope v. Leffingwell, 15 Otto, 3.) Where appellee has a color of right to dismissal, motion to affirm will be considered. (Whitney v. Cook, 9 Otto, 607; Hinckley v. Morton, 13 Otto, 764.)

6. **Motion day.**—The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that date to the other business of the court; the motion day shall be Monday of each week, and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

Original Rule 33, February Term, 1824, 9 Wheat. iv; 1 Peters, xi. Amended January Term, 1845, 3 How. v. Rule 27, in revision of 1858, 21 How. xv. Re-

vised and corrected December Term, 1870. Amended December 14, 1874, 20 Wall. xv, clause 5.

Note.—A motion to affirm, on the ground that an appeal was taken for delay only, cannot be properly coupled under this rule with a motion to dismiss founded on an alleged defect in the form of the condition of the appeal bond. (Gay v. Parpart, 101 U. S. 391.)

RULE 7. LAW LIBRARY.

1. **Use of books regulated.**—During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. It shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for, and forfeit and pay twice the value thereof; and also one dollar per day for each day's detention beyond the limited time.

Original Rule 39, January Term, 1833, 7 Peters, iv. Revised and corrected December Term, 1858, 21 How. vi.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the

printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

Promulgated October 25, 1875, 1 Otto, vii, clause 3.

3. **Conference-room.**—The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference-room, which he shall have fitted up in a proper manner, and he shall not permit such books to be taken therefrom by any one except the justices of the court.

Original Rule 39, January Term, 1833, 7 Peters, iv. Revised and corrected December Term, 1858, 21 How. vi, clause 2.

RULE 8. WRIT OF ERROR, RETURN, AND RECORD.

1. **Return, how made.**—The clerk of the court to which any writ of error may be directed shall make return of the same by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

Original Rule 11, February 13, 1797, 1 Cranch, xvii; 1 Wheat. xv; 1 Peters, vii. Revised December Term, 1858, 21 How. vii, January 4, 1884.

Note.—A motion to dismiss is made under this rule, but the court may dismiss the writ of error and permit plaintiff in error to withdraw the record for the purpose of suing out a new writ. (Blitz v. Brown, 7 Wall. 693.)

Return, by whom made.—A return by the clerk is necessary (Blitz v. Brown, 7 Wall. 693), and is sufficient (Stewart v. Ingle, 9 Wheat. 526); the judge's signature is not requisite. (Worcester v. Georgia, 6 Peters, 515.) On neglect or refusal of clerk to make return, court will compel him to do so. (U. S. v. Booth, 18 How. 476.)

2. Opinions annexed to record.—In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

Promulgated April 28, 1873, 15 Wall. v.

State courts.—The opinion of State courts made a part of the record is authority as to decision of points of law in that court. (Cousin v. Blanc, 19 How. 202.) The opinion of the court below is no part of the record, although required so to be annexed and transmitted. (England v. Gebhardt, 112 U. S. 502.)

3. What to be filed.—No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

Original Rule 30, promulgated February Term, 1823, 8 Wheat. vi; 1 Peters, x. Revised and corrected December Term, 1858, 21 How. vii.

Contents of record.—The cause will not be heard unless a complete record is filed (Keen v. Whittaker, 13 Peters, 459; Veitch v. Farmers' Bank, 6 Peters, 776); and where record is improperly prepared cause

will be remanded. (Estho v. Lear, 7 Peters, 130.) As to contents of record generally, see Crowell v. Randell, 10 Peters, 368. No papers or evidence will be considered as part of the record unless made so by the pleadings or opinion of the court. (Fisher v. Cockerell, 5 Peters, 254; Pennock v. Dialogue, 2 Peters, 1.) It is not necessary nor proper that the record should contain an agreed statement of the facts (Curtis v. Petitpain, 18 How. 109), or an agreement as to damages (Lanusse v. Barker, 3 Wheat. 102), or the reasons for a judgment, except it be the opinion of the court. (Williams v. Norris, 12 Wheat. 117; Davis v. Packard, 6 Peters, 41.) Nor need there appear such matter as affidavits (Campbell v. Rankin, 9 Otto, 261), citations (Innerarity v. Byrne, 5 How. 295), or the names of juror. (Owens v. Hanney, 9 Cranch, 180.) That these matters are certified by the clerk does not make them part of the record (Reed v. Marsh, 13 Peters, 153), and the practice of burdening the record with them is discountenanced. (Magniac v. Thompson, 7 Peters, 348.)

4. **Original papers.**—Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit court jurisdiction, that original papers of any kind should be inspected in this court, upon writ of error or appeal, such presiding judge may make such rule or order for the safekeeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

Original Rule 25, February Term, 1817, 2 Wheat. i; 1 Peters, ix. Revised and corrected December Term, 1858, 21 How. vii.

Inspection of originals.—Where an inspection of original papers is material, they will be ordered to be sent up (The Elsinour, 1 Wheat. 439); but this order is made only in cases of positive necessity. (Craig v. Smith. 10 Otto, 226.)

5. Writ, when returnable.—All appeals, writs of error and citations must be made returnable not exceeding thirty days from the day of signing the citations, whether the return day fall in vacation or in term-time, and be served before the return day.

Original Rule 33, December Term, 1867, 6 Wall. vi. Revised and corrected December Term, 1870. Amendment promulgated January 26, 1891, 137 U. S. 710.

Time extended.—See clause 4 of Rule 9, post, extension "thirty days" to "sixty days" in certain States and Territories.

Service and return of writ.—A citation and return are indispensable to jurisdiction (Alviso v. U. S., 5 Wall. 824); and in absence of them the cause will be dismissed (Hogan v. Ross, 9 How. 602; Garrison v. Cass Co., 5 Wall. 823), unless citation is waived by appearance (Alviso v. U. S., 5 Wall. 824); but an agreement of parties without an allowance of appeal and writ of error cannot give this court appellate jurisdiction. (Washington Co. v. Durant, 7 Wall. 694; Mossman v. Higginson, 4 Dall. 12; Blair v. Miller, 4 Dall. 21.) The writ is served by leaving a copy for the adverse party in the office of the clerk of the court where judgment was rendered. (Wood v. Lide, 4 Cranch, 179.) It must be made returnable on the day mentioned in the rule and no other. (Insurance Co. v. Mordecai, 21 How. 200; Porter v. Foley, 21 How. 393.) If after proper service defendant appear, objections to

irregularity of return are waived. (Wood v. Lide, 4 Cranch, 180.) The cause will not be taken up until thirty days after service unless defendant appear therein. (Lloyd v. Alexander, 1 Cranch, 111.)

6. **Record in admiralty and maritime causes, contents of.**—The record in cases of admiralty and maritime jurisdiction, when, under the requirements of law, the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

Promulgated May 2, 1881, 13 Otto, xiii.

Object of rule.—The Adriatic, 103 U. S. 730.

RULE 9. DOCKETING CASES.

1. **Duties of parties.**—It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term-time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term-time or

vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

Original Rule 16, February Term, 1803, 1 Cranch, xviii; 1 Wheat. xvi; 1 Peters, vii. Rule 19, February Term, 1806, 1 Wheat. xvi; 1 Peters, viii. Rule 32, promulgated February Term, 1821, 6 Wheat. vi. Rule 29, 1 Peters, x. Rule 43, January Term, 1835, 9 Peters, vii. Rule 63, December Term 1853, 16 How. ix. Revised December Term 1858, 21 How. vii. Amendment promulgated January 26, 1891, 137 U. S. 710.

Docketing causes—Dismissals.—Appeals must be prosecuted by filing the record within the term next after appeal is taken (Mesa v. U. S., 2 Black, 721; Castro v. U. S., 3 Wall. 46); or if taken during term, within requisite time at next term (Stafford v. Union Bank, 16 How. 135; Castro v. U. S., 3 Wall. 46; Str. Virginia v. West, 19 How. 182; U. S. v. Boisdore, 7 How. 658); and time will not be extended, though clerk certify that he cannot prepare record within time allowed (Sturgess v. Harrold, 18 How. 41); but if party is prevented through fraud from filing record in proper time, rule will not apply. (U. S. v. Gomez, 3 Wall. 752.) Where no record is filed, the appeal will be dismissed (Veitch v. Farmers' Bank, 6 Peters, 776; U. S. v. Fremont, 18 How. 30; Grigsby v. Purcell, 9 Otto, 505), upon production of clerk's certificate, that appeal was taken and not prosecuted. (The Jonquille, 6 Wheat. 452; Randolph v. Barbour, 6 Wheat. 128.) The clerk's certificate should show

accurately the title of the cause (Holliday v. Batsen, 4 How. 645), and the names of the parties severally (Smith v. Clark, 12 How. 21), and the date when the judgment was rendered. (Rhodes v. S. S. Galveston, 10 How. 144.) But production of original writ and citation are equivalent to the clerk's certificate. (Amis v. Pearle, 15 Peters, 211.) The dismissal may be on motion of appellee (U. S. v. Fremont, 18 How. 30; Grigsby v. Purcell, 9 Otto, 505), or by the court of its own motion. (Grigsby v. Purcell, 9 Otto, 505; (Edmonson v. Bloomshire, 7 Wall. 306.) Where the appeal is not perfected by filing of record, it is void (Edmonson v. Bloomshire, 7 Wall. 306; The Lucy, 8 Wall. 307), and having been thus dismissed, can only be remedied by a new appeal (Rogers v. Law, 21 How. 526), taken within the time limited by law therefor. (Str. Virginia v. West, 19 How. 182; U. S. v. Pacheco, 20 How. 261; Yeaton v. Lenox, 8 Peters, 123; Revised Statutes, sec. 635; Revised Statutes, sec. 1008.) Of contemporaneous motions, to docket and to dismiss the former will be allowed. (Owings v. Tiernan, 10 Peters, 24.) The rule to dismiss will not apply where the record is filed before the motion to dismiss (Bingham v. Morris, 7 Cranch, 99; Pickett's Heirs v. Legerwood, 7 Peters, 144), at any time within the term after appeal is taken. (Sparrow v. Strong, 3 Wall. 97.) Cause will be reinstated after dismissal, when no injustice will be to opposite party (Gwin v. Breedlove, 15 Peters, 284), as where cause, if docketed, could not have been reached during the term. (Gwin v. Breedlove, 15 Peters, 284.) A dismissal on failure to file record does not of itself amount to an affirmance. (U. S. v. Gomez, 23 How. 326.) An objection that the appeal was docketed too late cannot be relied upon by defendant in error when he has made a motion in the supreme court for a new bond, after the entry of the case on the docket of the supreme court. (Waldron v. Waldron, 156 U. S. 361.)

2. Rights of appellee.—But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and, if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

Original Rule 43, January Term, 1835, 9 Peters, vii. Rule 63, December Term, 1853, 21 How. viii. Amendment promulgated January 26, 1891, 137 U. S. 710.

Rights of parties.—Where appellee docket cause and file record, and appellant fail to do so, cause will be dismissed or may be set for argument (Str. Virginia v. West, 19 How. 182); but if appellant also docket cause and file record in proper time, case made by appellee will be dismissed. (Hartshorn v. Day, 18 How. 29.) Appellant may, on motion, in discretion of court, file transcript at any time within the term, and have cause reinstated. (U. S. v. Swan, 3 Peters, 68.)

3. Appearance of counsel.—Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

Original Rule 31, promulgated December Term, 1867, 6 Wall. v. Revised and corrected December Term, 1870.

Effect of appearance.—An appearance is a waiver of all objection to irregularity in the citation (Carroll v. Dorsey, 20 How. 204), or in the return to the writ of error. (Wood v. Lide, 4 Cranch, 180.) It cures

all antecedent error, and no plea of abatement can be put in (Knox v. Summers, 3 Cranch, 496); but it does not preclude a dismissal for want of jurisdiction except on the ground of such irregularities. (U. S. v. Yates, 6 How. 605.) Counsel entering appearance under the rule will be held responsible for all that such entry implies (Hurley v. Jones, 7 Otto, 318), as for the due prosecution of the suit (Hurley v. Jones, 7 Otto, 318); and, after appearance, notice to counsel is equivalent to notice to the parties. (Hurley v. Jones, 7 Otto, 318.) Appearance of counsel for party docketing the case must be entered on filing the transcript. (Green v. Elbert, 137 U. S. 615.)

4. **Time extended.**—In all cases where the period of thirty days is mentioned in Rule 8, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Idaho.

Original Rule 63, promulgated December Term, 1853, 16 How. ix. Revised December Term, 1858, 21 How. viii. Amended March 10, 1865, 2 Wall. viii. Revised and corrected December Term, 1870. Amendment promulgated January 26, 1891, 137 U. S. 710.

Docketing and dismissing.—Where the cause is docketed and appellant does not file record within sixty days, appeal will on motion be dismissed. (German v. U. S., 5 Wall. 825; Castro v. U. S., 3 Wall. 46.)

RULE 10. PRINTING RECORDS.

1. **Undertaking for fees.**—In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertak-

ing to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

Original Rule 20, February Term, 1807, 4 Cranch, 537; 1 Wheat. xvii; 1 Peters, viii. Amended Rule 37, January Term, 1831, 5 Peters, vii, 724. Revised and corrected December Term, 1858, 21 How. viii. Amended May 8, 1876, 1 Otto, vii. The practice since 22 Stat. 631 indicated in Green v. Elbert, 137 U. S. 615.

Failure to give bond.—The clerk is not bound to docket a cause until bond for his fees is given (Van Rensselaer v. Watts, 7 How. 784; Edwards v. U. S., 12 Otto, 577); and if no fee bond is filed, writ or appeal will be dismissed (Owings v. Tiernan, 10 Peters, 447; West v. Brashear, 12 Peters, 101), and the cause will not be reinstated, though bond is then filed. (Selma etc. R. R. Co. v. La. Nat. Bank, 4 Otto, 253. See Johnson v. Polk County, 23 Fla. 58.)

2. **Estimate and payment of fees.**—The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed.

3. **Copies printed.**—Upon payment by either party of the amount estimated by the clerk, twen-

ty-five copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. **Copy for printer.**—In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. **Printing and distribution.**—The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

Original Rule, January Term, 1831, 5 Peters, vii. 724. Revised and corrected December Term, 1858, 21 How. ix. Clauses 5 and 6 rescinded, and above clause adopted November 13, 1882, 16 Otto, vii. Validity, see 5 Peters, 724.

6. **Surplus or deficiency of cost.**—If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. **Cost of printing taxed.**—In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

January 4, 1884.

8. **Attachment for fees.**—Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of the said fees.

Original Rule 21, February Term, 1808, 4 Cranch, 537; 1 Wheat. xviii; 1 Peters, viii. Revised December Term, 1858, 21 How. ix, clause 7.

Liability for costs.—Each party is liable to the clerk for the fees due to him from them, respectively. (Caldwell v. Jackson, 7 Cranch, 276.)

9. **Statement of errors relied on, to be filed.**—The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the

record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

Promulgated March 28, 1887, 120 U. S. 785.

RULE 11. TRANSLATIONS.

How supplied.—Whenever any record, transmitted to this court upon a writ of error or appeal, shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed, but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court in order that a translation may be there supplied and inserted in the record.

Original Rule 60, promulgated December Term, 1851, 12 How. xi. Revised and corrected December Term, 1858, 21 How. ix.

RULE 12. EVIDENCE.

1. Further proof.—In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission to be issued from this court, or from any circuit court of the United States.

Original Rule 25, promulgated February Term. 1816, 1 Wheat. xix. Rule 24, 1 Peters, ix. Revised and corrected December Term, 1858, 21 How. ix.

Allowance of further proof.—Further proof will be ordered when the facts are not sufficiently clear (The Grotius, 8 Cranch, 456; The Adeline, 9 Cranch, 244; The Venus, 1 Wheat. 113; The George, 1 Wheat. 408; The Friendschaft, 3 Wheat. 48); or where the evidence is so contradictory or ambiguous as to render decision difficult. (The Samuel, 1 Wheat. 9; The Western Metropolis, 12 Wall. 389.) It is not ordered as a matter of course, but only when the interests of the case clearly require it. (The Sally Magee, 3 Wall. 452; The Gray Jacket, 5 Wall. 342.) The evidence before the court will always be first examined, to decide whether proper to admit further proof. (The London Packet, 2 Wheat. 372.) When further proofs proposed would be insufficient to make out a case, a commission for the purpose will be refused. (The Euphrates, 8 Cranch, 385.) Where evidence has been fraudulently suppressed, innocent party may usually make further proof. (The St. Lawrence, 8 Cranch, 434; Dos Hermanos, 2 Wheat. 77; The Fortuna, 3 Wheat. 237; The Gray Jacket, 5 Wall. 342.) If, on commission for further proof, all the necessary evidence is not

taken, a second commission for further proof will issue. (The Frances, 8 Cranch, 348.) Neglect or refusal to produce further proof on an order therefor is generally fatal to the party's claim. (La Nereyda, 8 Wheat. 108.) Depositions taken as further proof in one cause cannot be used therefor in another. (The Experiment, 4 Wheat. 84.) New evidence will be admitted only in admiralty and prize causes (Revised Statutes, sec. 698; The Argo, 2 Wheat. 289), and not in equity causes. (Blease v. Garlington, 92 U. S. 1; Roemer v. Simon, 91 U. S. 149; Holmes v. Trout, 7 Peters, 171; Mitchell v. U. S., 9 Peters, 711; Boone v. Chiles, 10 Peters, 177.) Extrinsic evidence will be allowed to show that, pending an appeal, an event has occurred, without fault of either party, which renders it impossible for the court to grant any relief. (Mills v. Green, 159 U. S. 651.)

2. **In maritime cases.**—In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice; *provided, however*, that nothing in this rule shall prevent any party from giving oral testimony in open court in cases where, by law, it is admissible.

Original Rule 32, promulgated February Term, 1817,

2 Wheat. vii; 1 Peters, ix. Revised and corrected December Term, 1858, 21 How. x.

New evidence.—In cases of admiralty and prize only will new evidence be admitted here (Revised Statutes, sec. 698; The Argo, 2 Wheat. 289), and to take such evidence a commission will be granted. (Hawthorne v. U. S., 7 Cranch, 107; The Frances, 8 Cranch, 353; The Western Metropolis, 12 Wall. 389), which must issue strictly according to the rules (The Argo, 2 Wheat. 289; The London Packet, 2 Wheat. 371); depositions de bene esse are not allowed. (The London Packet, 2 Wheat. 289.) The court will decide whether the evidence is admissible before it will issue a commission. (The Ocean Queen, 6 Blatchf. 24; Fed. Cas. No. 10411.) Where it is desired to examine a witness in this court, proper reasons should be given why examination was not made in lower court (The Mabey, 10 Wall. 419),-as that the attendance of the witness could not be obtained (The Mabey, 10 Wall. 419), or that the evidence was discovered after the appeal. (The Western Metropolis, 12 Wall. 389.)

RULE 13. OBJECTIONS TO EVIDENCE IN THE RECORD.

In equity and admiralty.—In all cases of equity or admiralty jurisdiction heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

Original Rule 32, promulgated February Term, 1824, 9 Wheat. iv; 1 Peters, xi. Revised and corrected December Term, 1858, 21 How. x.

Objections to evidence.—Objections cannot be taken for the first time in this court to matters appearing on the record, such as deeds (Mitchell v. U. S., 9 Peters, 711), depositions or exhibits (Mechanics' Bank v. Seton, 1 Peters, 299; Harrison v. Nixon, 9 Peters, 536), or to the reports of a master in chancery (Canal Co. v. Gordon, 6 Wall. 561), or a referee. (Lumber Co. v. Buchtel, 11 Otto, 633.) If proper objection is taken in the lower court, and objection appears on the record, it will be examined here (The Pizarro, 2 Wheat. 227); but where the objection is not on the record, it is deemed to have been waived. (The Pizarro, 2 Wheat. 227; Hinde v. Longworth, 11 Wheat. 206; Brockett v. Brockett, 3 How. 691; San Pedro v. Canon Del Agua Co., 146 U. S. 120.) The party is confined to the specific objection taken at the trial. (Hinde v. Longworth, 11 Wheat. 209.) Where a general objection is made, but no specific ground given therefor, this court will not consider the objection. (Thomas v. Lawson, 21 How. 331.) The supreme court will take no notice of a stipulation of counsel as to the evidence bearing on a finding of the court. (Fort Worth City Co. v. Smith Bridge Co., 151 U. S. 294.) Where a deposition is not in the record the supreme court cannot decide that its exclusion as evidence was error. (Whitney v. Fox, 166 U. S. 637.)

RULE 14. CERTIORARI.

Diminution of record.—No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the en-

try of the case; otherwise the same will not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

Original Rule 31, promulgated February Term, 1824, 9 Wheat. iv; 1 Peters, x. Revised and corrected December Term, 1858, 21 How. v.

Certiorari for diminution, purpose of.—Where the clerk certifies the record to be full, a dissatisfied party must resort to remedy of suggestion of diminution (U. S. v. Gomez, 1 Wall. 690), and on motion, the deficiency, if any, may be supplied by certiorari (The Rio Grande, 19 Wall. 178; Field v. Milton, 3 Cranch, 513; Stimpson v. West Chester R. R. Co., 3 How. 553), or party may dismiss the writ and proceed anew. (Elmore v. Grymes, 1 Peters, 469.) To the proper issuance of a certiorari, it should appear on the face of the record that there is a material deficiency. (Holmes v. Trout, 7 Peters, 210.) When a paper of importance appears to be missing, or defendant's counsel does not appear, it may be brought upon certiorari by the court of its own motion. (Morgan v. Curtenius, 19 How. 8.) Certiorari is not the proper remedy to correct a transcript from which the clerk's certificate is omitted. (Hodges v. Vaughn, 19 Wall. 12.) Nor should it be used to show existence of facts not in the findings. (U. S. v. Adams, 9 Wall. 661.) If it appear for the first time at the argument that indispensable matter is omitted, court of its own motion may allow certiorari and time for return thereto. (Sweeney v. Lomme, 22 Wall. 208.) Where delay is accounted for, certiorari to correct record will be granted even at third term (Stearns v. U. S., 4 Wall. 1); but the hearing of the cause if reached before return of writ will not be postponed on that account. (Clark v. Hackett, 1 Black. 77.) The court will not reopen a cause, and allow certiorari to cor-

rect record after judgment. (Gayler v. Wilder, 10 How. 509.) The clerk's return to a certiorari is sufficient; it need not be made by the judge. (Stewart v. Ingle, 9 Wheat. 526.) Certiorari for diminution of the record will not be granted if not made at the first term as required by the above rule, and no satisfactory cause is shown for the delay (Chappell v. United States, 160 U. S. 499).

RULE 15. DEATH OF PARTY.

1. **Revivor.**—Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order, that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed if it be erronous; *provided, however,* that a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, or district from which the case is brought for three successive weeks, at least sixty

days before the beginning of the term of the supreme court then next ensuing.

Original Rule 31, promulgated February term, 1821, 6 Wheat. v; 1 Peters, ix. Revised and corrected December term, 1858, 21 How. x. Amended December 11, 1879, 10 Otto, ix.

Note.—Where an appeal has been dismissed pursuant to this rule, the decree of dismissal, or cause shown, may be rescinded upon the proper representatives of the deceased party being made parties to the suit and their appearance being entered, under the rule. (Randolph v. Quidnick Co., 135 U. S. 457.) Where one of a number of parties dies, the cause survives to the other parties (McKinney v. Carroll, 12 Peters, 66), and when suggestion of his death is made on the record, a judgment will be valid against the others as survivors. (McNutt v. Bland, 2 How. 28.) The decree will not be defeated by the death of the party while the cause is under advisement (Clay v. Smith, 3 Peters, 411); or is decided without knowledge of the death of the party (U. S. Bank v. Weisiger, 2 Peters, 481); for the court will order the decree entered as of the first day of the term. (U. S. Bank v. Weisiger, 2 Peters, 481; McNutt v. Bland, 2 How. 28.) On suggestion of death of appellee and appearance for executor, court will entertain a motion to dismiss for want of prosecution. (Hook v. Linton, 10 Peters, 107; Green v. Watkins, 6 Wheat. 260.) If death happens after dismissal of writ, application to revive cause must be in lower court. (McClane v. Boon, 6 Wall. 244; Taylor v. Savage, 1 How. 282.)

2. When action abates.—When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the sec-

ond term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

Original Rule 61, promulgated December term, 1851, 13 How. v. Revised and corrected December term, 1858, 21 How. xi.

Abatement.—Rule followed, see Phillips v. Preston, 11 How. 294; Barribeau v. Brant, 17 How. 43.

3. **Death at time of taking writ.**—When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the supreme court of the United States from any final judgment or decree rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead, and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error, or appellant, shall make a suggestion to the court,

supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and upon such suggestion he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and on hearing have the judgment or decree reversed if the same be erroneous; *provided, however,* that a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the supreme court then next ensuing; and *provided,* also, that in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required by the opposite party, the case shall abate; and *provided,* also, that the said representative may, at any time, before or after said suggestion, come in and be made a party to the suit, and thereupon the

case shall proceed, and be heard and determined as in other cases.

Promulgated January 12, 1875, 20 Wall. xv.

RULE 16. NO APPEARANCE OF PLAINTIFF.

At trial.—Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for a trial the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

Original Rule 18 1-2, promulgated February term, 1806; Montalet v. Murray, 3 Cranch, 249; 3 Peters, xvii. Revised and corrected December term, 1858, 21 How. xi.

Effect of.—Where plaintiff's counsel withdraw appearance they are subject to dismissal or affirmance as though no appearance was filed. (McGuire v. Commonwealth, 3 Wall. 382; Rhode Island v. Massachusetts, 12 Peters, 657.) Where no just cause can be shown for plaintiff's nonappearance cause will not be reinstated over appellee's objection. (Hurley v. Jones, 7 Otto, 318; Alvord v. U. S., 9 Otto, 593; James v. McCormack, 15 Otto, 265.) Dismissal under this rule should be with costs. (Montalet v. Murray, 3 Cranch, 249.) Dismissal of a petition of right under this rule (see Miller v. Edgerton, 140 U. S. 690).

RULE 17. NONAPPEARANCE OF DEFENDANT.

At trial.—Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plain-

tiff, and to give judgment according to the right of the case.

Original Rule 15, promulgated December 9, 1801, 1 Cranch, xviii; 1 Wheat. xvi; 1 Peters, vii. Amended December term, 1858, 21 How. xi.

Effect of.—Appellee's appearance is of no importance to appellant (U. S. v. Yates, 6 How. 605), and the court will not compel the appearance of appellee, but will follow the rule. (Grayson v. Virginia, 3 Dall. 320; Oswald v. New York, 2 Dall. 415; Chisholm v. Georgia, 2 Dall. 419.)

RULE 18. NONAPPEARANCE OF EITHER PARTY.

At call of docket.—When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

Original Rule 54, promulgated January term, 1850, 8 How. v. Rescinded by Rule 29, promulgated December term, 1851, 12 How. ix. Revised and corrected December term, 1858, 21 How. xi.

Dismissal.—Rule followed (see Rodford v. Craig, 5 Cranch, 289).

RULE 19. NEITHER PARTY READY.

At second term, dismissal.—When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

Original Rule 55, promulgated January term, 1850, 8 How. vi. Revised and corrected December term, 1858, 21 How. xi.

RULE 20. PRINTED ARGUMENTS.

1. Distribution of copies.—In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and in addition appeals from the court of claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but twenty-five copies of the arguments, signed by attorneys or counselors of this court, must be first filed.

Original Rule 40, promulgated January term, 1833, 7 Peters, iv. Amended January 7, 1842, 16 Peters, viii. Amended January term, 1845, 3 How. vi. Amended January term, 1850, 8 How. vi. Revised December term, 1858, 21 How. xii. Amended March 10, 1865, 2 Wall. viii. Amended December term, 1865, 3 Wall. viii. Amended March 3, 1875, 21 Wall. v. October 31, 1887, 123 U. S. 759.

What received.—Papers will not be received or examined unless presented in court and shown to opposite counsel. (Mitchell v. U. S., 8 Peters, 307.) Where arguments are improperly prepared submission will be set aside, and cause restored to docket. (School Dist. v. Ins. Co., 11 Otto, 472.) Where a submission was made, but the record did not show the matter in dispute to exceed the value of five thousand dollars, and the court on its own motion

dismissed the case, it refused afterward to consider affidavits to supply the defect on the record. (Johnson v. Wilkins, 118 U. S. 228.) Where counsel on both sides stipulated in writing to submit a case under this rule, and no argument is filed in behalf of the plaintiff in error, but one is filed in behalf of the defendant in error, under the stipulation, the court will take the case as submitted, and affirm the judgment without passing specially upon the assignments which were returned with the record. (Aurrecoechea v. Bangs, 110 U. S. 217.)

2. Effect of filing.—When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

Promulgated December term, 1858, 21 How. xii.

3. When oral argument presented.—When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

Original Rule 58, promulgated December term, 1850, 10 How. v. Revised and corrected December term, 1858, 21 How. xii.

Note.—Where no time is mentioned in the stipulation, a motion to require defendant in error to submit under this clause, to which no reference is made in the stipulation, will be denied if opposed. (Glenn v. Fant, 124 U. S. 123.)

4. **Brief not received after argument.**—No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

Promulgated January 12, 1875, 20 Wall. xvi.

RULE 21. BRIEFS.

1. **Counsel for plaintiff.**—The counsel for the plaintiff in error, or appellant, shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

Original Rule 30, promulgated February term, 1821, 6 Wheat. v. Rule 27, 1 Peters, ix. Original Rule 53, promulgated December term, 1849, 7 How. v; 8 How. v. Rule 58, promulgated April 24, 1850, 8 How. vi. Rule 21, clause 6, promulgated December term, 1858, 21 How. xii. Amended February 9, 1865. 2 Wall. viii. Amended May 1, 1871. 11 Wall. ix. Amended November 16, 1872, 14 Wall. ix.

Briefs to be filed.—If no brief is filed by plaintiff's counsel the appeal may be dismissed (Portland Cement Co. v. U. S., 15 Wall. 1), or the judgment affirmed (Ryan v. Koch, 17 Wall. 19); but the cause may be reinstated on consent of defendant. (Catharine v. U. S., 7 Cranch, 99.)

2. **Brief, what to contain.**—This brief shall contain *in the order here stated:*

I. *Statement.*—A concise abstract, or statement of the case presenting succinctly the questions involved and the manner in which they are raised.

II. *Errors assigned.*—A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged, and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected.

Original clause 7, promulgated May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xii.

When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused.

When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

Original clause 6, promulgated May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xii, sub. 5.

Error, assignment of.—Where the error is not set out specifically it will be held insufficient (Lucas v. Brook, 18 How. 436; Scholey v. Rew, 23 Wall. 331), even though the errors are apparent on the record (Deitsch v. Wiggins, 15 Wall. 539); and if none of the errors are properly assigned the appeal may be

dismissed (Portland Co. v. U. S., 15 Wall. 1; Rowe v. Phelps, 152 U. S. 87); or judgment affirmed. (Ryan v. Koch, 17 Wall. 19.) The supreme court can only be called upon to consider such assignments of error as are pressed upon its attention or noticed in the opinion of the court below (Old Jordan M. & M. Co. v. Societe Anonyme Des Mines De Lexington, 164 U. S. 261).

III. *Points of law or fact.*—A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

Promulgated May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xi.

Contents of brief.—A statement of the case must be filed, though the question is only one of fact. (Reily v. Lamar, 2 Cranch, 347, note.) Unlimited assignments of error are a perversion of the rule. When made, only such assignments as seem material will be considered. (Phillips & Co. v. Seymour, 1 Otto, 648.) Unless the rule as to setting out statute is observed, submission will be set aside. (School Dist. v. Ins. Co., 11 Otto, 472.)

3. **Counsel for appellee, brief of.**—The counsel for a defendant in error, or an appellee, shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or ap-

pellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

Original Rule 30, promulgated February 7, 1821, 6 Wheat. v. Rule 27, 1 Peters, ix. Rule 53, promulgated December term, 1849, 7 How. v; 8 How. v. Rule 21, clause 6, promulgated December term, 1858, 21 How. xii. Amended February 9, 1865, 2 Wall. viii. Amended May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xi.

4. **Errors not assigned disregarded.**—When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court, and errors not specified according to this rule will be disregarded, but the court at its option may notice a plain error not assigned or specified.

Promulgated May 1, 1871, 11 Wall. x. Amended November 16, 1872, 14 Wall. xii.

Assignment of errors.—See note to clause 5 of this rule. Defendant may move to dismiss writ, or may open record and pray an affirmance when there is no assignment or no proper assignment of errors (Maxwell v. Stewart, 21 Wall. 71), or no error so plain that it ought to be noticed without assignment. (Treat v. Jennison, 20 Wall. 652.) Where defendant does not assign an error against him, it will not be corrected on plaintiff's writ. (Tilden v. Blair, 21 Wall. 241.) A failure to annex to or return with a writ of error an assignment of errors, is no ground for dismissal, if the assignment is filed in accordance with this section (School Dist. v. Hall, 106 U. S. 428); and where no counsel appeared for plaintiff in

error the judgment was affirmed under this section. (Dugger v. Tayloe, 121 U. S. 286.) If there is no assignment of errors, and no specifications as required by the rule, and no plain error, the writ will be dismissed (Rowe v. Phelps, 152 U. S. 87).

5. **Default, effect of.**—When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion, and when a defendant in error or an appellee is in default, he will not be heard except on consent of his adversary, and by request of the court.

Original Rule 53, promulgated December term, 1849, 7 How. v; 8 How. v. Rule 21, clauses 3 and 5, promulgated December term, 1858, 21 How. xii. Amended May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xii.

6. **Number of counsel.**—When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

Original Rule 21, clause 7, promulgated December term, 1858, 21 How. xiii. Rule 21, clause 12, promulgated May 1, 1871, 11 Wall. x. Amended November 16, 1872, 14 Wall. xii. Rule 21, clause 6 (as above) promulgated Dec. 11, 1893, 150 U. S. 713.

RULE 22. ORAL ARGUMENT.

1. **Opening and close.**—The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals, they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

Promulgated December term, 1858, 21 How. xii.

2. **Two counsel.**—Only two counsel will be heard for each party on the argument of a case.

Original Rule 23, promulgated February term, 1812, 1 Wheat. xviii; 1 Peters, ix; December term, 1870, 11 Wall. ix; December term, 1858, 21 How. xii; Rule 21, amended November 16, 1872, 14 Wall. xi, clause 1.

Counsel, number of.—Only two counsel for each party can be heard on the argument (General Rule, 7 Cranch, 1); the cause cannot be divided into distinct points and two counsel be heard on each point. (General Rule, 7 Cranch, 1.) In cases of great importance this rule will be dispensed with. (McCulloch v. Maryland, 4 Wheat. 322, note; The Gray Jacket, 5 Wall. 370.)

3. **Two hours for argument.**—Two hours on each side shall be allowed for the argument and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion; *provided, always,* that a fair opening of the case shall be made by the party having the opening and closing arguments.

Original Rule 53, promulgated January term, 1849, 7 How. v; 8 How. v. Revised December term, 1858, 21 How. xii. Amended May 1, 1871, 11 Wall. ix. Amended November 16, 1872, 14 Wall. xi.

Further time.—Under special circumstances, or important cases, further time will be allowed. (The Gray Jacket, 5 Wall. 370.)

RULE 23. INTEREST.

1. **On affirmance.**—In cases where a writ of error is prosecuted to this court, and the judgment

of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

Original Rule 62, promulgated December term, 1851, 13 How. v. Amended December term, 1858, 21 How. xiii.

Rate of interest.—Under original rule, rate was six per cent from judgment to date of affirmance. (Sneed v. Wister, 8 Wheat. 690; Brown v. Van Braam, 3 Dall. 344; Mitchell v. Harmony, 13 How. 116.) The present rate is the amount allowed in State where judgment is rendered. (Perkins v. Fourniquet, 14 How. 328; R. R. Co. v. Turrill, 11 Otto, 836.) Where no legal rate of interest is fixed by State statutes, reasonable rate will be allowed as damages. (Young v. Godbe, 15 Wall. 563.) Rule not applicable to admiralty cases; discretionary with court to allow any interest. (Hemmenway v. Fisher, 20 How. 255; Himely v. Rose, 5 Cranch, 313; The Santa Maria, 10 Wheat. 431.)

2. **Damage on frivolous appeal.**—In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

Original Rules 17, 18, promulgated February term, 1803, 1 Cranch, xviii. Original clause 3, December term, 1858, 21 How. xiii. Amended May 1, 1871, 11 Wall. x.

Damages for delay.—Where the judgment is affirmed, damages may be allowed for delay (Cotton v. Wallace, 3 Dall. 302), which damage may be single or double. (Rev. Stats. § 1010.) The court is the sole judge of the propriety of allowing damages for delay. (Boyce v. Grundy, 9 Peters, 275.) The judgment will usually be affirmed with damages, where no question was raised for consideration of the court, either below or here (Kilbourne v. State Sav. Inst., 22 How. 503; Sutton v. Bancroft, 23 How. 320; Jenkins v. Banning, 23 How. 455; Prentice v. Pickersgill, 6 Wall. 511; Campbell v. Wilcox, 10 Wall. 421; Ins. Co. v. Huchbergers, 12 Wall. 164; Hennessy v. Sheldon, 12 Wall. 440; Hall v. Jordan, 19 Wall. 271; West Wisc. R. R. Co. v. Foley, 4 Otto, 100; Whitney v. Cook, 9 Otto, 607, or where the case is brought here in disregard of the law as settled here by precedent (Pennywit v. Eaton, 15 Wall. 382), or where there appears no plausible ground for the writ of error (Texas & Pac. Ry. Co. v. Volk, 151 U. S. 73), or brought solely for the purpose of delaying payment of a just debt. (Barrow v. Hill, 13 How. 55.) But where it is prosecuted in good faith, though unsuccessfully, damages are not allowed. (McKee v. Rains, 10 Wall. 22; McNeil v. Holbrook, 12 Peters, 84.) The cause will not be dismissed simply because the court deems the appeal to be for delay only. Both parties have a right to be heard. (Amory v. Amory, 1 Otto, 356.) Interest shall run only on the judgment, and not on the damages. (Jennings v. The Perseverance, 3 Dall. 338.) In admiralty cases damages are not allowed. (The Douro, 3 Wall. 564; The Santa Maria, 10 Wheat. 431; see Dzailynski v. Bank of Jacksonville, 23 Fla. 46.)

3. On appeal from decree.—The same rule shall be applied to decrees for the payment of money in

cases in equity unless otherwise ordered by the court.

Original Rule 62, promulgated December term, 1851, 13 How. v. Original clause, 2, 21 How. xiii. Amended December term, 1870, see Revision of 1870.

4. In admiralty.—In cases in admiralty, damages and interest may be allowed if specially directed by the court.

Amendment promulgated March 10, 1890, 133 U. S. 711.

RULE 24. COSTS.

1. On dismissal.—In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

Original Rule 45, promulgated January Term, 1838, 12 Peters, vii. Revised December Term, 1858, 21 How. xiii.

Note.—If the record is printed under the supervision of the clerk, he may require the payment of the fee chargeable under this rule, before the printing is done. (Bean v. Patterson, 110 U. S. 401.)

Costs on dismissal.—Costs are not allowed defendant on dismissal for want of jurisdiction. (Inglow v. Coolidge, 2 Wheat. 363; McIver v. Wattles, 9 Wheat. 650; Graham v. Strader, 18 How. 602; Brown v. Union Bank, 4 How. 466.) In such cases costs were allowed prior to this rule. (Winchester v. Jackson, 3 Cranch, 514.)

2. On affirmance.—In all cases of affirmance of any judgment or decree in this court, costs shall

be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

Original Rule 46, promulgated January Term, 1838, 12 Peters, vii; 21 How. xiii.

Costs on affirmance.—Costs will be allowed defendant on affirmance (Walton v. U. S., 9 Wheat. 658; Campbell v. Gordon, 6 Cranch, 183; Clerke v. Harwood, 3 Dall. 343), and may be single or double in discretion of court. (Rev. Stats., sec. 1010, ante.) An appeal does not lie from a decree for costs; and if a decree be affirmed with respect to the merits, it will not be reversed on the question of costs. (Du Bois v. Kirk, 158 U. S. 58.)

3. **On reversal.**—In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

Original Rule 22, promulgated February Term, 1810, 1 Wheat. xviii; 1 Peters, ix. Rule 47, promulgated January Term, 1838, 12 Peters, vii. Amended December term, 1851, 21 How. xiv. Amended April 18, 1864, 1 Wall. v.

Costs on reversal.—Where the lower court is ordered to enter judgment for plaintiff, it should enter judgment with costs (McKnight v. Craig, 6 Cranch, 187; Bradstreet v. Potter, 16 Peters, 317), but where the reversal is for want of jurisdiction, no costs are allowed plaintiff. (Montalet v. Murray, 4 Cranch, 46.)

4. **United States exempt.**—Neither of the foregoing sections shall apply to cases where the Unit-

ed States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

Original Rule 48, promulgated January Term, 1838, 12 Peters, vii; 21 How. xiv.

Costs against United States.—No costs can be awarded against United States. (U. S. v. Hooe, 3 Cranch, 73; The Antelope, 12 Wheat. 546; U. S. v. Ringgold, 8 Peters, 150; U. S. v. McLemore, 4 How. 286; U. S. v. Boyd, 5 How. 30.) The United States never pay costs. (U. S. v. Barker, 2 Wheat. 395.) The above subdivision does not prohibit the allowance of costs of the lower courts in the favor of the United States. (United States v. Southern Pac. R. S. Co., 56 Fed. Rep. 865.)

5. Mandate.—In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Original Rule 49, promulgated January Term, 1838, 12 Peters, vii; 21 How. xiv.

Mandate on dismissal.—The clerk will issue a mandate according to the decree (Sibbald v. U. S., 12 Peters, 492), and certify the decision to the lower court. (U. S. v. Fremont, 18 How. 30.) The mandate is the guide in executing the judgment (West v. Brashear, 14 Peters, 51), and the lower court is bound to follow the mandate and carry the decree into effect. (Skillern v. May, 6 Cranch 267; Ex parte Story, 12

Peters, 344; Poultney v. Laffayette, 12 Peters, 472; Cutter v. Rae, 7 How. 737.) Where the mandate is ambiguous the decrees and opinions of this court and court below are to be taken into consideration. (The Santa Maria, 10 Wheat. 431; Mitchell v. U. S., 15 Peters, 52.) No appeal will lie from a decree entered in accordance with the mandate. (Stewart v. Salamon, 7 Otto, 361; Humphrey v. Baker, 13 Otto, 736.)

6. **Costs to be inserted.**—When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same bill of items taxed in detail.

Original Rule 50, promulgated January Term, 1838, 12 Peters vii; 21 How. xvi.

Costs generally.—In admiralty causes each party should bear his own costs. (Penhallow v. Doane, 3 Dall. 54.) In cases of original jurisdiction this court has power to award costs against either party. (Pennsylvania v. Wheeling Bridge, 18 How. 460.)

7. **Fees of clerk.**—In the pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every copy of an opinion of the court or any justice thereof, certified under seal, one dollar for every printed page, but not to exceed five dollars in the whole for any copy.

The fees of the clerk shall be computed. as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

Promulgated March 28, 1887, 120 U. S. 785.

RULE 25. OPINIONS OF THE COURT.

1. **Recorded.**—All opinions delivered by the court shall immediately, upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter, as soon as the same shall be recorded.

Original Rule 41 promulgated March 14, 1834, 8 Peters, vii; 21 How. xiv.

Extent of.—The court will not deliver extended opinions in unimportant matters. (Tyler v. Campbell, 16 Otto, 322.) The court will usually announce their conclusions without reproducing the facts in the opinion. (Harrell v. Beall, 17 Wall. 590.) The supreme court takes judicial notice of its own opinions. (Thompson v. Maxwell Land Grant & R. Co., 168 U. S. 451.)

2. **Preservation of.**—The original opinions of the court shall be filed with the clerk of this court for preservation.

Original Rule 41, promulgated March 14, 1834, 8 Peters, vii. Amended December Term, 1858, 21 How. xiv. Amended December Term, 1870, see Revision of 1870.

3. **Recording.**—Opinions printed under the supervision of the justices delivering the same

need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

RULE 26. CALL AND ORDER OF THE DOCKET.

1. **On second day of term.**—The court on the second day in each term will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day, during the term, in the same order (except as herein after provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

Original Rule 35, promulgated March, 1830, 3 Peters, xvi; 21 How. xv. Revised December Term, 1870, see Revision of 1870.

Cause at foot of docket.—When a cause is sent to foot of docket it will not be reinstated to the inconvenience of other litigants. (Barry v. Mercein, 4 How. 574.)

2. **Ten causes each day.**—Ten causes only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten

cases will be called, with a view to the disposition of such of them as are not to be argued.

Original Rule 35, promulgated March, 1830; 3 Peters, xvi; 21 How. xv. Revised December Term, 1870, see Revision of 1870. Amendment promulgated May 13, 1889, 130 U. S. 706.

3. Criminal cases.—Criminal cases may be advanced, by leave of the court, on motion of either party.

Promulgated December Term, 1866, 4 Wall. vii.

Advancement of criminal cases.—Where the question is one which, for public convenience, should be immediately decided, cause will be advanced (U. S. v. Norton, 1 Otto, 558); if otherwise, and defendant is not in jail, cases will not be advanced except for good cause. (Ward v. Maryland, 12 Wall. 163. See Poindexter v. Greenhow, 109 U. S. 63.)

4. Once adjudicated.—Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Cases of general public interest.—Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also, by leave of the court, be advanced on motion of the attorney-general.

6. Motions to advance.—All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

Original Rule, December Term, 1866, 4 Wall. vii. Amended May 3, 1875, 21 Wall. v.

Advancement of cases of public interest.—On a motion to advance a cause good reasons for so doing should be shown. (U. S. v. Norton, 1 Otto, 558.) Causes of public importance will not be advanced when similar causes are already assigned for remainder of term. (Barry v. Mercein, 4 How. 574.) Even revenue causes will not be advanced if government operations are not embarrassed by the delay. (Hoge v. Richmond R. R. Co., 3 Otto, 1.) Cases arising on municipal ordinances levying taxes are not revenue causes entitled to preference. (Davenport v. Dows, 15 Wall. 390.)

7. **Order to be preserved.**—No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances, to be shown to the court. Every case which shall have been called in its order and passed, and put at the foot of the docket, shall, if not again reached during the term it was called, be continued to the next term of the court.

Original Rule 36, promulgated March, 1830, 3 Peters, xvii. Amended February 5, 1840, 14 Peters, xi; 21 How. xv. Revised and corrected December Term, 1870, see Revision of 1870, clause 5.

Advancing causes generally.—Causes not presenting questions entitling them to precedence will not be advanced (Pennsylvania v. Wheeling etc. Co., 11 How. 528), especially over the objection of one party thereto. (Louisiana v. New Orleans, 13 Otto, 521.) Between causes involving private interests only, one is not entitled to be advanced over others. (Sage v.

C. P. R. R. Co., 3 Otto, 412; Miller v. State, 12 Wall. 159.) That a cause appear to have no merit, is no reason for advancement. (Amory v. Amory, 1 Otto, 356.)

8. **Causes heard together.**—Two or more cases involving the same question may, by the leave of the court, be heard together, but they must be argued as one case.

Promulgated December Term, 1866, 4 Wall. vii.

Hearing causes together.—Rule followed in U. S. v. Booth, 18 How. 476.

9. **Reinstatement of cause.**—If, after a case has been passed, under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call, ten cases after that under argument or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

Promulgated January 18, 1875, 20 Wall. xvii, clause 7.

10. **How passed.**—No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon the application made and leave granted in open court.

Promulgated January 18, 1875, 20 Wall. xvii, clause 7.

RULE 27. ADJOURNMENT.

Announcement.—The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon; and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

Original Rule 52, promulgated January Term, 1838, 12 Peters, viii. Rule 28 on revision of December Term, 1858, 21 How. xv.

RULE 28. DISMISSAL IN VACATION.

On written agreement.—Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in any appeal, shall, in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

Original Rule 64, promulgated December Term, 1857, 20 How. iv. Rule 29 of Revision of 1858, 21 How. xvi.

RULE 29. SUPERSEDEAS.

Bond of indemnity.—*Supersedeas* bonds in the circuit court must be taken, with good and suffi-

cient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including "just damages for delay," and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or where the property is in the custody of the marshal, under admiralty process, as in case of capture or seizure; or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property and the costs of the suit and "just damages for delay," and costs and interest on the appeal.

Original Rule 32, promulgated December Term, 1867, 6 Wall. v.

Supersedeas bonds.—Where it does not appear, it is presumed, until the contrary is proved, that a proper bond was taken (Martin v. Hunter, 1 Wheat. 304), and that it was sufficient. (French v. Shoemaker, 12 Wall. 86.) The security on such bond must be equal to the amount of decree, with damages and interest (Stafford v. Union Bank, 16 How. 135), and costs (Seward v. Corneau, 12 Otto, 161), and not solely enough to cover damages for delay. (Catlett v. Brodie, 9 Wheat. 553; The Wanata, 5 Otto, 604.) The amount of bond and sufficiency of security rests with the judge (Jerome v. McCarter, 21 Wall. 17), and his

discretion will not be interfered with. (Ex parte Milwaukee R. R. Co., 5 Wall. 188; The Dos Hermanos, 10 Wheat. 306.) But after the circuit judge has approved the bond and the appeal is transferred, any further order as to sufficiency of bond is void. (Draper v. Davis, 12 Otto, 370; Keyser v. Farr, 15 Otto, 265.) Where the circuit judge refuses to accept a bond, this court has power to accept it. (Sage v. R. R. Co., 6 Otto, 712.) If after acceptance security on a bond becomes bad, this court will make such order as justice requires. (Jerome v. McCarter, 21 Wall. 17; Martin v. Hazard Powder Co., 3 Otto, 302; Williams v. Claflin, 13 Otto, 753.) Where approval of bond was obtained by fraud or perjury, supersedeas will be vacated and a new bond will not be received. (R. R. Co. v. Schutte, 10 Otto, 644.) An appeal bond is not necessarily defective if it fail to mention the term at which it was rendered. (Davis v. Wakelee, 156 U. S. 680.) The approval of the bond must be by the judge or justice (National Bank v. Omaha, 6 Otto, 737), either in court or out of court (Hudgins v. Kemp, 18 How. 531), but he cannot delegate such power to the clerk. (O'Reilly v. Edrington, 6 Otto, 724.) The bond must be given within ten days from rendering of decree. (Rubber Co. v. Goodyear, 6 Wall. 153.) As to proper language for a bond, see Gay v. Parpart, 11 Otto, 391. In suit for a specific delivery of railroad aid bond the bond will be fixed to cover coupons already due and to mature within four years with interest and damages. (Massachusetts etc. Co. v. Cherokee Tp., 42 Fed. Rep. 750.) A writ of error will not be quashed on the ground that the record was not filed until June, the writ being returnable to the January Term, as defendant in error under this rule had a right to docket and dismiss the case. (Pickett v. Legerwood, 7 Peters, 144.) A corporation will not be accepted as surety on a writ of error to the supreme

court when there is fair reason to question whether the corporation has power to bind itself by such a contract. (Black v. Black, 53 Fed. Rep. 985.) Where a judgment of a Federal court has been affirmed and the condition of the supersedeas bond thereby broken, judgment may be had thereon by motion against the sureties as well as the principal. (Third National Bank v. Gordon, 53 Fed. Rep. 471.) A judgment rendered against a county for the amount of certain drain warrants, with a provision for mandamus to compel the levy of assessments according to law upon the lands benefited by the drains, is one "for the recovery of money not otherwise secured." (Fuller v. Aylesworth, 43 U. S. App. 657, 75 Fed. Rep. 694.)

RULE 30. REHEARING.

Petition for.—A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

Rehearing.—An application for a rehearing cannot be entertained when presented after the expiration of the term at which the judgment was rendered. (Bushnell v. Cooke Min. & Sm. Co., 150 U. S. 82.)

RULE 31. PRINTED RECORDS.

Form and size of.—All records, arguments, and briefs printed for the use of the court must be in such form and size that they can be conveniently

bound together so as to make an ordinary octavo volume.

Promulgated December 1, 1879, 10 Otto, ix.

Note.—The court will not, according to the rule 31, hear any cause without a complete copy of the record having been brought up. (Keene v. Whittaker, 13 Peters, 459.)

RULE 32. WRITS OF ERROR AND APPEALS UNDER THE ACT OF FEBRUARY 25, 1889, CHAPTER 236.

Cases brought to this court by writ of error or appeal, under the Act of February 25, 1889, chapter 236, or under section 5 of the Act of March 3, 1891, chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6 in regard to motions to dismiss writs of error and appeals.

Original rule promulgated March 10, 1890, 133 U. S. 711; amended November 28, 1892, 146 U. S. 707. See ante, Rules, 9, 10.

A writ of error to a State court which had been refused to grant a motion to remove may be advanced as within the spirit, although not within the letter, of Rule 32, regarding advancement of causes remanded by the circuit court. (Burlington C. R. & N. R. Co. v. Dunn, 121 U. S. 182. See Poindexter v. Greenhow, 109 U. S. 63; Louisiana v. New Orleans, 103 U. S. 521; U. S. v. Norton, 91 U. S. 558; Ward v. Maryland, 12 Wall. 163; Call v. Palmer, 106 U. S. 39; Fletcher v. Hamlet, 116 U. S. 408.) By the above rule as amended cases arising under sec. 5, act of 1891, will be advanced when the only question at is-

sue is the question of the jurisdiction of the court below. (Aspen Min. & Sm. Co. v. Billings, 150 U. S. 31.)

RULE 33. MODELS, DIAGRAMS, EXHIBITS.

1. **Models and exhibits.**—Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

Promulgated November 23, 1885, 115 U. S. 701.

2. **Disposition of.**—All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshall to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

Promulgated January 7, 1884, and November 23, 1885, 115 U. S. 701.

RULE 34. CUSTODY OF PRISONERS.

1. **Writ of habeas corpus.**—Pending an appeal from the final decision of any court or judge

declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

Note.—This rule does not make the decision of the circuit judge as judge a decision of the court. (Carper v. Fitzgerald, 121 U. S. 87.)

2. Detention of prisoner.—Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Appearance.—Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

Promulgated March 29, 1886, and as amended May 10, 1886, 117 U. S. 708.

RULE 35. ASSIGNMENT OF ERRORS.

1. Where an appeal or writ or error is taken from a district court or a circuit court direct to this court, under section 5 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, the plaintiff in error or appellant shall file with the clerk of the

court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to, *totidem verbis*, whether it be in instructions given, or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9 of Rule 10.

Promulgated May 11, 1891, 139 U. S. 705.

For section referred to, and notes, see ante, § 175.

Assignment of errors.—The assignment cannot be availed of to import questions into a cause which the record does not show were raised in the court below and rulings asked thereon. (Ansbro v. United States, 159 U. S. 695.)

RULE 36. APPEALS AND WRITS OF ERROR.

1. An appeal or a writ of error from a circuit court or a district court direct to this court, in the cases provided for in sections 5 and 6 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, may be allowed, in term-time or in vacation, by any justice of this court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security to be taken and the citations signed by him, and he may also grant a *supersedeas* and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under said sections 5 and 6, the circuit court or district court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

Promulgated May 11, 1891, 139 U. S. 706.

For sections referred to, and notes, see ante, §§ 175, 177.

Who may admit to bail.—It was held by a district court that paragraph 2 of the above rule was void, and that a circuit justice could not allow bail, under the second paragraph of the rule, in a case in another circuit than the one to which he was allotted by the supreme court. (United States v. Hudson, 65 Fed.

Rep. 68.) But this decision was reversed by the supreme court, and it was held by a divided court that a justice of the supreme court has power to allow a writ of error to operate as a supersedeas from the supreme court to the district court, although not assigned to that circuit, and may order bail in an amount fixed by him to be taken by the district judge, the form of the bond and the sufficiency of the sureties to be passed upon by the latter. (Hudson v. Parker, 156 U. S. 277.)

RULE 37. CASES FROM CIRCUIT COURT OF APPEALS.

1. Where under section 6 of the said act, a circuit court of appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where application is made to this court under section 6 of the said act to require a case to be certified to it for its review and determination, a certified copy of the entire record of the case in the circuit court of appeals shall be furnished to this court by the applicant, as part of the application.

Promulgated May 11, 1891, 139 U. S. 706.

For section referred to, see ante, § 177.

Certification of question.—Under the above rule it is the fundamental facts that are to be stated, and not the evidential facts from which the fundamental facts are found. (Sigafus v. Porter, 85 Fed. Rep. 689.)

RULE 38. INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 5 and 6 of the said act.

Promulgated May 11, 1891, 139 U. S. 707.

RULE 39. MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

Promulgated November 25, 1895, 159 U. S. 709.

ORDER

IN REFERENCE TO

APPEALS FROM THE COURT OF CLAIMS.

Regulations prescribed by the Supreme Court of the United States, under which appeals may be taken from the court of claims to said Supreme Court.

RULE 1.

Record on appeal.—In all cases hereafter decided in the court of claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the supreme court upon the following record, and none other:

I. *Transcript.*—A transcript of the pleadings in the case of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

II. *Statement of facts and conclusions of law.*—A finding by the court of claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts on which the court

founds its judgment or decree. The findings of facts and conclusions of law to be certified to this court as a part of the record.

Original rule, promulgated December term, 1865, 3 Wall. vii. Clause 2 amended December term, 1872, 17 Wall. xvii.

Record, how prepared.—The findings should be prepared with all the fullness and perspicuity of a special verdict (Burr v. Des Moines Co., 1 Wall. 102), and are conclusive unless impeached for some error of law appearing on the record. (U. S. v. Smith, 94 U. S. 214.) The court of claims should not send up the evidence, even though the parties agree thereto (Hubbell v. U. S., 6 Ct. of Cl. 53); but if it is sent here, and from it there appears no legal ground for the establishment of the facts found judgment will be reversed. (U. S. v. Clark, 6 Otto, 37.) Only such acts should be brought here as will enable this court to properly decide the questions of law ruled on below. (De Groot v. U. S., 5 Wall. 419; U. S. v. Pugh, 9 Otto, 265.) That the record is not properly prepared does not warrant a dismissal, but record will be remanded for correction. (U. S. v. Johnson, 6 Wall. 101; Wilcox v. U. S., 6 Ct. of Cl. 77; U. S. v. Clark, 4 Otto, 73.)

RULE 2.

Appeal, how taken.—In all cases in which judgments or decrees have heretofore been rendered, where either party is by law entitled to an appeal, the party desiring it shall make application to the court of claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or

decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as, in the judgment of said court, shall, distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1 (except the statement of facts and law therein mentioned) shall constitute the record on which those cases shall be heard in the supreme court.

Promulgated December term, 1865, 3 Wall. vii.

Allowance of appeal.—Where an appeal has been allowed and the record filed in the supreme court, the court of claims has lost jurisdiction. It cannot set aside the allowance. (Kirk's Case, 28 Ct. of Cl. 276.)

RULE 3.

Order of allowance, limitation.—In all cases an order of allowance of appeal by the court of claims, or the chief justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

Promulgated December term, 1865, 3 Wall. viii.

Allowance of appeal.—The allowance of an appeal does not absolutely divest the court of claims of jurisdiction. (Ex parte Roberts, 15 Wall. 384.) That court may revoke the allowance while the record is still in its possession. (Ex parte Roberts, 15 Wall. 384.)

RULE 4.

Findings to be filed.—In all cases in which either party is entitled to appeal to the supreme court, the court of claims shall make and file their finding of facts and their conclusions of law therein, in open court, before or at the time they enter their judgment in the case.

Promulgated December term, 1869, 9 Wall. vii.

The above rule has no reference to a case of equity jurisdiction conferred in a special case by a special act. (United States v. Old Settlers, 148 U. S. 427.) The whole of the record in an equity case on appeal from the court of claims goes to the supreme court. (La Abra Mining Co.'s Case, 32 Ct. of Cl. 462.) The findings of fact in appealable cases are simply to present to the appellate court questions of law; in congressional cases to inform the legislative authority of things necessary for the convenient exercise of the legislative intelligence. (Vance's Case, 30 Ct. of Cl. 252.)

RULE 5.

Request for findings.—In every case, each party, at such time, before trial and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven, and deems material to the due presentation of the case in the findings of fact.

Original rule promulgated December term, 1869, 9 Wall. vii. Amended January 29, 1879, 7 Otto, viii.

Findings.—If the court of claims refuse to find a material fact, the proper remedy is to take an exception, which will then be reviewed on appeal (U. S. v. Adams, 9 Wall. 661; Lawrence v. U. S., 8 Ct. of Cl.

252), and if the finding is material, the case will be sent back with directions to find such facts (Mahan v. U. S., 14 Wall. 109), but the appellate court will not direct the lower court what to find, nor how to find it. (U. S. v. Adams, 9 Wall. 661.) In making its findings the court will set out only facts established by the evidence (Roche v. District Columbia, 18 Ct. of Cl. 289; Power v. U. S., 18 Ct. of Cl. 493; Harvey v. U. S., 18 Ct. of Cl. 470), and those facts always separately from the conclusions of law. (Harvey v. U. S., 18 Ct. of Cl. 570; Gallagher v. District Columbia, 18 Ct. of Cl. 705.)

ORIGINAL RULES

OF THE

CIRCUIT COURT OF APPEALS.

The following rules were originally drawn up for the several circuit courts of appeals, and with slight alterations were adopted in each circuit. Since such adoption the court in each circuit has amended the rules in many particulars, and in some circuits additional rules have been adopted. The alterations made at the time of the adoption, together with the amendments subsequently made, and the additional rules afterward adopted, will be found in full under the heads of the respective circuits, post.

RULE 1. NAME.

The court adopts "United States Circuit Court of Appeals for the ——— Circuit" as the title of the court.

RULE 2. SEAL.

The seal shall contain the words "United States" on the upper part of the outer edge, and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right, and the words "——— Circuit" in two lines, in the center with a dash beneath.

RULE 3. TERMS.

One term of this court shall be held annually at the city of ——— on the ——— of ———, and shall be adjourned to such times and places as the court may from time to time designate.

The places and times of meeting of the several circuit courts of appeals will be found under the head of "Amended Rules," post.

RULE 4. QUORUM.

1. If at any term a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

RULE 5. CLERK.

1. The clerk's office shall be kept at the place designated in the act creating the court at which a term shall be held annually.

2. The clerk shall not practice, either as attorney or counselor, in this court, or in any other court, while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by section 794 of the Revised Statutes, and shall give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe-keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room or from the office without an order from the court.

RULE 6. MARSHAL, CRIER, AND OTHER OFFICERS.

1. Every marshal and deputy marshal shall, before he enters on the duties of his appointment, take an oath in the form prescribed by section 782 of the Revised Statutes, and the marshal shall, before he enters on the duties of his office, give bond in a sum to be fixed, and with sureties to be approved, by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the supreme court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the supreme court of the United States, and on subscribing the roll; but no fee shall be charged therefor.

RULE 8. PRACTICE.

The practice shall be the same as in the supreme court of the United States, as far as the same shall be applicable.

Conforming to practice of supreme court.—The practice in admiralty appeals is not like that formerly existing in the circuit courts under admiralty Rule 49, but like the supreme court practice, and new evidence can only be taken by a commission under supreme court Rule 12, which should issue only when the testimony is material, and a good excuse for not offering it in the trial court is given. (The Beeche Dene, 13 U. S. App. 211; 55 Fed. Rep. 526.)

RULE 9. PROCESS.

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the supreme court.

RULE 10. BILL OF EXCEPTIONS.

The judges of the circuit and district courts shall not allow any bill of exceptions which shall con-

tain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

Bill of exceptions.—Under the above rule an exception to "the whole of said instruction and to each and every part thereof" cannot be sustained if any of the propositions of law contained in such charge are sound. (Price v. Pankhurst, 10 U. S. App. 497; 53 Fed. Rep. 312.) The court will not consider a bill of exceptions to the instructions given or refused, unless it contains the evidence on which the question of law raised by the instructions arose. It is not enough that the testimony be found in another part of the record. (Southwestern Virginia Imp. Co. v. Frari, 8 U. S. App. 444; 58 Fed. Rep. 171.) To enable the circuit court of appeals to review the action of the circuit court upon the admission or exclusion of evidence, the evidence to which the exception is directed must be incorporated in the bill of exceptions. (National Masonic Assn. v. Sparks, 49 U. S. App. 681; 83 Fed. Rep. 225; North Chicago St. Ry. Co. v. St. John, U. S. App., 85 Fed. Rep. 806; Lincoln Sav. Bank & S. D. Co. v. Allen, 49 U. S. App. 498; 82 Fed. Rep. 148; New York & N. E. R. Co. v. Hyde, 5 U. S. App. 443; 56 Fed. Rep. 188; Dietz v. Lymer, 27 U. S. App. 415; 63 Fed. Rep. 758.) And the bill of exceptions must be presented to the judge at the same term or within a further time allowed by order entered at that term, or by standing rule of court. (New York & N. E. R. Co. v. Hyde, 5 U. S. App. 443; 56 Fed. Rep. 188; Miller v. Morgan, 30 U. S. App. 19; 67 Fed. Rep. 82;

United States v. First Nat. Bank, 86 Fed. Rep. 861; U. S. v. Jones, 149 U. S. 262; United States v. Carr, 19 U. S. App. 679; 61 Fed. Rep. 802; Missouri K. & T. Ry. Co. v. Russell, 19 U. S. App. 641; 60 Fed. Rep. 501.) A single exception taken to the court's refusal of a series of instructions to the jury is of no avail unless all the instructions state correct propositions of law applicable to the case. (Wapples Platter Co. v. Turner, 49 U. S. App. 592; 83 Fed. Rep. 64; New England Furniture & Carpet Co. v. Catholicon Co., 49 U. S. App. 78; 79 Fed. Rep. 294; Thiede v. Utah, 159 U. S. 510; Chateaugay v. Blake, 144 U. S. 476; Walker v. Windsor Nat. Bank, 5 U. S. App. 421; 56 Fed. Rep. 76; Newport News & M. V. Co. v. Pace, 158 U. S. 36; Cleveland C. C. & St. L. Ry. Co. v. Zider, 18 U. S. App. 699; 61 Fed. Rep. 908.) A charge to the jury does not become a part of the record unless embodied in the bill of exceptions. (Blake v. United States, 33 U. S. App. 376; 71 Fed. Rep. 286.) Exceptions to instructions taken after the jury had retired will not be considered, notwithstanding the practice of the trial court to allow such exceptions to be taken only in the absence of the jury. (Western Union Tel. Co. v. Baker, 56 U. S. App. 601; 85 Fed. Rep. 690; Emanuel v. Gates, 2 U. S. App. 525; 53 Fed. Rep. 772; New England Furniture & Carpet Co. v. Catholicon Co., 49 U. S. App. 78; 79 Fed. Rep. 294; Merchants' Exch. Bank v. McGraw, 45 U. S. App. 55; 76 Fed. Rep. 930; Johnson v. Garber, 43 U. S. App. 107; 73 Fed. Rep. 523; Park Bros. & Co. v. Bushnell, 20 U. S. App. 425; 60 Fed. Rep. 583; Bracken v. Union Pac. Ry. Co., 12 U. S. App. 421; 56 Fed. Rep. 447; Stone v. United States, 29 U. S. App. 32; 64 Fed. Rep. 667; Commercial Travelers' etc. Assn. v. Fulton, 45 U. S. App. 578; 79 Fed. Rep. 423.) But when the jury returns for further instructions in the absence of counsel, the rule is different. (Merchants' Exch.

Bank v. McGraw, 45 U. S. App. 55; 76 Fed. Rep. 930.) Only such exceptions to instructions as were taken in the lower court may be urged on appeal. (Northern Pac. Ry. Co. v. Krohne, U. S. App., 86 Fed. Rep. 230; Kansas & A. V. Ry. Co. v. Dye, 36 U. S. App. 23; 70 Fed. Rep. 24; Hoppenstedt v. Fuller, 36 U. S. App. 271; 71 Fed. Rep. 99.) A refusal to direct a verdict can be reviewed only when all the evidence is given in the bill of exceptions. (Taylor-Craig Corp. v. Hage, 32 U. S. App. 548; 69 Fed. Rep. 581; Denver & R. G. R. Co. v. Lorentzen, 49 U. S. App. 81; 79 Fed. Rep. 291; Jefferson v. Burhans, U. S. App., 85 Fed. Rep. 924; and the same rule applies where an instruction is given and excepted to. (Rollins & Sons v. Board of Commrs., 49 U. S. App. 399; 80 Fed. Rep. 692; United States v. Patrick, 36 U. S. App. 645; 73 Fed. Rep. 800.) Whether a verdict be general or special, a bill of exceptions is not necessary to make it a part of the record. (Daube v. Philadelphia & R. C. & I. Co., 46 U. S. App. 591; 77 Fed. Rep. 713.) Neither is it necessary to embody a special finding in a bill of exceptions. (Wesson v. Saline Co., 34 U. S. App. 680; 73 Fed. Rep. 917.) The exclusion of documentary evidence is not assignable as error where the excluded documents are not set forth in the bill of exceptions. (Masonic Ben. Assn. v. Lyman, 18 U. S. App. 507; 60 Fed. Rep. 498.) An exception to the giving of "each and all" of the instructions is unavailing where any part of the charge states a correct proposition of law. (Masonic Ben. Assn. v. Lyman, 18 U. S. App. 507; 60 Fed. Rep. 498; Newport News & M. V. Co. v. Pace, 158 U. S. 36; Cleveland C. C. & St. L. Ry. Co. v. Zider, 18 U. S. App. 699; 61 Fed. Rep. 908; Vider v. O'Brien, 18 U. S. App. 711; 62 Fed. Rep. 326.) Where a party upon a trial excepts to a ruling of the court, but does not stand upon such exception, and acquiesces in the ruling and elects to

proceed with the trial, he thereby waives his exception. (Campbell v. Haverhill, 155 U. S. 610.) No exception is necessary to raise the question whether the facts found support the judgment. (Seeberger v. Schlesinger, 152 U. S. 581.) The bill of exceptions must state the evidence, the rulings, exceptions, and the grounds of the same. (Marion Phosphate Co. v. Cummer, 13 U. S. App. 604; 60 Fed. Rep. 873.) Exceptions may be sufficient, though inartistically drawn. (Central Trust Co. v. Wabash St. L. & P. Ry. Co., 57 Fed. Rep. 441.) Exceptions to a charge must be taken when the charge is given. (Sutherland v. Round, 16 U. S. App. 30; 57 Fed. Rep. 467.) A bill of exceptions which is merely a recapitulation of conflicting evidence is insufficient. (Moller v. United States, 13 U. S. App. 472; 57 Fed. Rep. 490.) A general exception to a general instruction is too indefinite. (Anderson v. Avis, 8 U. S. App. 618; 62 Fed. Rep. 227; Thorn v. Pittard, 8 U. S. App. 597; 62 Fed. Rep. 232; Phillip Schneider Co. v. American I. M. Co., 40 U. S. App. 382; 77 Fed. Rep. 138.) The bill of exceptions must state that it contains all the evidence, in order to justify the appellate court in considering whether a general finding on the facts was supported by the evidence. (U. S. Mutual Acc. Assn. v. Robinson, 36 U. S. App. 690; 74 Fed. Rep. 10; North American etc. Co. v. Colonial & U. S. Mortg. Co., 76 Fed. Rep. 623; Atchison, T. & S. Fe Ry. Co. v. Myers, 24 U. S. App. 295; 63 Fed. Rep. 793.) Rules of court prescribing the time within which bills of exception must be presented or settled are rules of procedure, which may be dispensed with in the discretion of the trial judge, provided the exceptions are seasonably taken, and the bill of exceptions is presented at the term at which the judgment is rendered. (Southern Pac. Co. v. Johnson, 44 U. S. App. 1, 16; 69 Fed. Rep. 559.) An appellate court will not make an order author-

izing the court below to amend the bill of exceptions so as to show whether or not it contains all the evidence produced at the trial. (Rollins v. Board of Commrs. of Gunnison Co., 49 U. S. App. 64; 78 Fed. Rep. 741.) Amendments to a bill of exceptions should not be allowed after the close of the term at which it was settled and after the cause has been removed to the appellate court. (Honey v. Chicago B. & Q. R. Co., 49 U. S. App. 625; 82 Fed. Rep. 773.) A statement on motion for a new trial, if regularly settled and allowed, and containing all the exceptions taken and all the evidence relating to the same, is sufficient to serve as a bill of exceptions on writ of error. (Alexander v. United States, 15 U. S. App. 158; 57 Fed. Rep. 828.) When a case is tried by the court without a jury the facts are not reviewable by bill of exceptions, or in any other manner. (Bowden v. Burnham, 19 U. S. App. 448; 59 Fed. Rep. 752.) An objection and exception to the introduction of certain evidence, for which no ground is assigned, cannot be considered on appeal. (Tabor v. Commercial Nat. Bank, 27 U. S. App. 111; 62 Fed. Rep. 383.) The circuit court has power to extend the time for making, filing, and serving a bill of exceptions by an order nunc pro tunc. (Talbot v. Press Pub. Co., 80 Fed. Rep. 567.) The appellate court may permit the amendment of the bill of exceptions to show that the court below permitted an amendment of the record after the term. (Whiting v. Equitable Life Ins. Co., 13 U. S. App. 597; 60 Fed. Rep. 197.) When the record itself discloses the ground on which reversal is sought, a bill of exceptions is not necessary. (St. Paul M. & M. Ry. Co., 44 U. S. App. 271; 72 Fed. Rep. 945.)

RULE 11. ASSIGNMENT OF ERRORS.

The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of error which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

Assignment of errors.—Under this rule assignments of error upon admission and rejection of evidence must set forth the full substance of the evidence admitted and of documentary evidence rejected. Where a witness is not permitted to answer a question, the full substance of the expected answer should be set out. (United States v. Indian Grave Drainage Dist., U. S. App., 85 Fed. Rep. 928.) The assignment must set forth the full substance of documents rejected; setting the document forth in the bill of exceptions is not sufficient. (Atlas

Distilling Co. v. Rheinstrom, U. S. App., 86 Fed. Rep. 244; Gallot v. United States, U. S. App., 87 Fed. Rep. 446; Sipes v. Seymour, 40 U. S. App. 185; 76 Fed. Rep. 116.) Assignments must not be too general. (Hart v. Bowen, U. S. App., 86 Fed. Rep. 877.) Assignments that in substance amount to only that the court erred in deciding the case for the opposite party, are too general. (Louisiana A. & M. R. Co. v. Board of L. Commrs., U. S. App., 87 Fed. Rep. 594; Oswego Township v. Travelers' Ins. Co., 36 U. S. App. 73; 70 Fed. Rep. 225; Florida Cent. & P. R. Co. v. Cutting, 30 U. S. App. 428; 68 Fed. Rep. 586; United States v. Ferguson, 45 U. S. App. 457; 78 Fed. Rep. 103.) Where the plaintiff incorporated the error complained of into the petition for appeal, and the petition is then filed with the clerk, the assignment of errors is "filed with the petition." (Central Trust Co. v. Continental Trust Co., U. S. App., 86 Fed. Rep. 517.) Under the above rule the court will not consider errors the assignment of which is not made and filed in the court below until after the appeal or writ of error is allowed. (United States v. Goodrich, 12 U. S. App. 108; 54 Fed. Rep. 21; Flahrity v. Union Pac. Ry. Co., 12 U. S. App. 532; 56 Fed. Rep. 908; Union Pac. Ry. Co. v. Colorado Eastern Ry. Co., 12 U. S. App. 110; 54 Fed. Rep. 22; Mutual Life Ins. Co. v. Conoley, 25 U. S. App. 86; 63 Fed. Rep. 180; Crabtree v. McCurtain, 19 U. S. App. 660; 61 Fed. Rep. 808; Dufour v. Lang, 2 U. S. App. 477; 54 Fed. Rep. 913.) Assignments which fail to set out the full substance of the evidence admitted or rejected will not be considered. (Newman v. Virginia T. & S. & I. Co., 42 U. S. App. 466; 80 Fed. Rep. 228; Haldane v. United States, 32 U. S. App. 607; 69 Fed. Rep. 819; National Bank of Commerce v. First National Bank, 27 U. S. App. 88; 61 Fed. Rep. 899.) In some instances the court will notice an error

of its own accord, although the error has not been properly assigned. (Western N. C. Land Co. v. Scaife, 42 U. S. App. 439; 80 Fed. Rep. 352; National Acc. Soc. v. Spiro, 47 U. S. App. 293; 78 Fed. Rep. 774; Russell v. Bohn, 53 U. S. App. 667; 83 Fed. Rep. 976; Flagler v. Kidd, 45 U. S. App. 461; 78 Fed. Rep. 341.) But this is not usually done except when the assignment has some sound merit in it, and that injustice has been done. (National Acc. Soc. v. Spiro, 47 U. S. App. 293; 78 Fed. Rep. 774; Atchison T. & S. Fe R. Co. v. Mulligan, 34 U. S. App. 1; 67 Fed. Rep. 569.) An assignment cannot be good if it is necessary to look beyond its terms to the brief for a statement of the question to be presented. (Grape Creek Coal Co. v. Farmers' L. & T. Co., 24 U. S. App. 38; 63 Fed. Rep. 891.) An assignment of errors made up by basing a separate assignment upon every exception taken during the trial is equivalent to a general assignment of errors. (Florida Cent. Ry. Co. v. Bucki, 30 U. S. App. 454; 68 Fed. Rep. 864.) Assignments which, when they relate to the questions, do not show that the questions were answered, and when they relate to the answers do not show what the answers were, cannot be noticed. (American Nat. Bank v. Nat. Wall Paper Co., 40 U. S. App. 646; 77 Fed. Rep. 85; Schradsky v. Stinson, 40 U. S. App. 455; 76 Fed. Rep. 730.) Assignments relating to the giving or refusing of instructions will not be considered unless they set out fully the parts of the charge referred to. (Prichard v. Budd, 42 U. S. App. 186; 76 Fed. Rep. 710.) A single assignment must not embrace two distinct propositions. (Clarke v. Deere & M. Co., 53 U. S. App. 166; 80 Fed. Rep. 534.) There should be a separate assignment of error in respect to each part of the charge which is alleged to be erroneous. (Vider v. O'Brien, 18 U. S. App. 711; 62 Fed. Rep. 326.) The petition for writ of error is intended

merely to ask for a writ of error in general terms, and need not specifically mention each order or judgment complained of. (Tefft v. Stern, 43 U. S. App. 442; 74 Fed. Rep. 755.) The court will not consider on appeal a question not raised before the lower court and not mentioned in the assignment of errors. (Third National Bank v. National Bank of Chester Valley, U. S. App., 86 Fed. Rep. 852; Brauer v. Campania Nav. La Flecha, 35 U. S. App. 44; 66 Fed. Rep. 776; National Masonic Assn. v. Sparks, 49 U. S. App. 681; 83 Fed. Rep. 225.) An assignment of error upon a general finding made by the court in an action at law, tried without a jury, raises no question for review. (Fourth Nat. Bank v. City of Belleville, 53 U. S. App. 628; 83 Fed. Rep. 675; Morris v. Canda, U. S. App., 80 Fed. Rep. 739.) An assignment of error should plainly and specifically point out the particular error alleged, or it will not be considered. (Richardson v. Walton, 17 U. S. App. 525; 61 Fed. Rep. 535; Mitchell v. Markes, 22 U. S. App. 325; 62 Fed. Rep. 139; City of Anniston v. Safe Deposit & T. Co., U. S. App., 85 Fed. Rep. 856; The Natchez, 41 U. S. App. 708; 78 Fed. Rep. 183; Doe v. Waterloo Min. Co., 44 U. S. App. 204; 70 Fed. Rep. 455; Supreme Council C. K. of A. v. Fidelity & Casualty Co., 22 U. S. App. 439; 63 Fed. Rep. 48; City of Findlay v. Pertz, 43 U. S. App. 383; 74 Fed. Rep. 681; Charleston Ice Mfg. Co. v. Joyce, 8 U. S. App. 309; 54 Fed. Rep. 332; MacDonald v. United States, 24 U. S. App. 25; 63 Fed. Rep. 426.) An assignment of error will not be considered when the exceptions were insufficient to call the question to the attention of the trial court. (Pringer Lithographing Co. v. Falk, 20 U. S. App. 296; 59 Fed. Rep. 707; Guggenheim v. Kirchhofer, 26 U. S. App. 664; 66 Fed. Rep. 755; King v. McLean Asylum, 21 U. S. App. 481; 64 Fed. Rep. 331; The Robert Graham Dun, 33 U. S. App. 297; 70 Fed.

Rep. 270; United States Sug. Ref. v. Providence Sugar etc. Co., 18 U. S. App. 603; 62 Fed. Rep. 375; Drexel v. True, 36 U. S. App. 611; 74 Fed. Rep. 12; Ward v. Blake Mfg. Co., 12 U. S. App. 295; 56 Fed. Rep. 437; but see Kentucky Life & Acc. Ins. Co. v. Hamilton, 22 U. S. App. 386, 548; 63 Fed. Rep. 93.) Assignments of errors on cross-appeals must be prosecuted like other appeals. (Building & Loan Assn. v. Logan, 30 U. S. App. 163; 66 Fed. Rep. 827.) Assignments of error in relation to instruction asked and refused will be disregarded when they neither quote nor refer to the evidence that shows the relevancy of the propositions of law propounded therein. (Newman v. Virginia T. & C. S. & I. Co., 42 U. S. App. 466; 80 Fed. Rep. 228; Union Casualty & S. Co. v. Schwerin, 42 U. S. App. 514; 80 Fed. Rep. 638; People's Sav. Inst. v. Miles, 40 U. S. App. 341; 76 Fed. Rep. 252.) The specifications in a case brought up by appeal should be that in this or that particular, separately stated, the decree is erroneous. (Andrews v. National Foundry etc., 46 U. S. App. 281; 76 Fed. Rep. 166.) Assignments of error directed to the opinion of the trial court will not be considered on review. (Mutual Reserve Fund Life Assn. v. Du Bois, 56 U. S. App. 586; 85 Fed. Rep. 586; Russel v. Kern, 34 U. S. App. 90; 69 Fed. Rep. 94; North American L. & T. Co. v. Colonial & U. S. Mortg. Co., 55 U. S. App. 157; 83 Fed. Rep. 796; Evans v. Suess Ornamental Glass Co., 53 U. S. App. 567; 83 Fed. Rep. 706.) An assignment that the verdict is not sustained by the evidence cannot be considered if the plaintiff in error has not asked, at the close of the whole evidence, for the direction of a verdict in his favor. (Western Coal & M. Co. v. Ingraham, 36 U. S. App. 1; 70 Fed. Rep. 219; Oswego Twp. v. Travelers' Ins. Co., 36 U. S. App. 13; 70 Fed. Rep. 225; Tabor v. Commercial Nat. Bank, 27 U. S. App. 111; 62 Fed. Rep. 383.) A mo-

tion to strike out an assignment of error on the ground that it was not well taken is not proper practice. (Petersburg Sav. & Ins. Co. v. Dellatorre, 30 U. S. App. 504; 70 Fed. Rep. 643.) Questions of law depending upon facts which have not been certified in a bill of exceptions will not be disposed of in the appellate court. (Mutual Life Ins. Co. v. Conoley, 25 U. S. App. 86; 63 Fed. Rep. 180; Woodbury v. City of Shawneetown, 34 U. S. App. 655; 74 Fed. Rep. 205.) Assignments of error involving questions of fact will not be considered on error in law actions. (Crawford v. Foster, 53 U. S. App. 669; 83 Fed. Rep. 975.) The omission to set out in the title of an assignment of error the names of all the parties affected by the appeal does not affect the jurisdiction of the appellate court over the parties whose names are omitted. (Andrews v. National Foundry & P. Works, 46 U. S. App. 281; 76 Fed. Rep. 166.) In an admiralty suit the appellate court may allow additional assignments of error, on motion and for cause shown. (Cory v. Penco, 39 U. S. App. 762; 76 Fed. Rep. 997.) The assignments of error need not state the reasons why the rulings complained of are erroneous, nor state that the party duly objected to such ruling. (Atchison T. & S. Fe R. Co. v. Meyers, 46 U. S. App. 226; 76 Fed. Rep. 443.) Assignments of error are necessary in appeals as well as on writs of error. (Randolph v. Allen, 41 U. S. App. 117; 73 Fed. Rep. 23.) Each assignment should embrace but a single exception. (United States v. Indian Grave Drainage Dist., U. S. App., 85 Fed. Rep. 928.)

RULE 12. OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed

to be taken to the admissibility of any deposition, deed, grant, exhibit, or translation found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

Objections to Evidence.—An objection made, for the first time, on appeal, to the admissibility of an exhibit is unavailing. (Franklin Sugar Ref. Co. v. Funch, 39 U. S. App. 219; 73 Fed. Rep. 844.)

RULE 13. SUPERSEDEAS AND COST BONDS.

1. *Supersedeas* bonds in the circuit and district courts must be taken with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but, in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the

costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On all appeals from any interlocutory order or decree granting or continuing an injunction in a circuit or district court, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such circuit or district court a bond to the opposite party, in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

Bonds.—The above rule does not apply to bonds required upon the allowance of writs of error where no supersedeas is asked or granted. (Wheeling Bridge & T. R. R. Co. v. Cochran; 25 U. S. App. 306; 68 Fed. Rep. 141.) The liability of sureties on a supersedeas bond given by defendant for deterioration of property attached, etc., is not affected by the fact there was no personal judgment against the defendants, where there is a deficiency remaining on the amount found due the plaintiff after sale of property. (Dexter Horton & Co. v. Sayward, 84 Fed. Rep. 296.) That plaintiff in error failed to take the proper steps to give the appellate court jurisdiction is no defense to his liability on his supersedeas bond. (Dexter Horton v. Sayward, 84 Fed. Rep. 296.) But an appeal bond which is given in a cause in which no appeal lies and which does not operate to stay execution, creates no liability. (Steele v. Crider, 61 Fed. Rep. 484.)

RULE 14. WRITS OF ERROR, APPEALS, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record,

bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term-time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty Rule 52 of the supreme court.

Filing record.—That the record has not been filed before the return day, is not ground for dismissal where it has been filed before the motion to dismiss is made. (Andrews v. Thum, 21 U. S. App. 459; 64 Fed. Rep. 149.) An order extending the time for filing the record on appeal, made after the time has expired, is ineffective. (West v. Irwin, 9 U. S. App. 547; 54 Fed. Rep. 419.)

Filing writ of error.—The writ of error must be indorsed, as filed, by the clerk. (Mutual Life Ins. Co. v. Phinney, 48 U. S. App. 78; 76 Fed. Rep. 617.)

Return, etc.—The rules in regard to the return day of appeals and to the filing of transcript are directory, and it is within the sound discretion of the court to relieve parties who have not complied therewith. (State of Florida v. Charlotte Harbor Phosphate Co., 30 U. S. App. 535; 70 Fed. Rep. 883.) A writ of error will not be dismissed because return was made one day after it was returnable by its terms. (Altenberg v. Grant, 54 U. S. App. 312; 83 Fed. Rep. 980.)

Partial appeals.—It is no ground of objection that an appeal is expressly limited to a part of the decree below, when this is the only part from which appellant could appeal. (Nashua & L. R. Corp. v. Boston & Lowell R. Corp., 21 U. S. App. 50; 61 Fed. Rep. 237.) On an appeal in equity, in the absence of joint stipulation for simplifying the transcript, the clerk should send up the whole of the record, in the strict sense of the word, made as directed by Rev. Stats., sec. 750, except that, when there has been a previous appeal, matters preceding the mandate should ordinarily be omitted; and if any parts thereof are omitted, even by joint stipulation, their nature should be indicated. But as to the proofs, entries, and papers on file "necessary to the hearing of the appeal" the clerk,

in the absence of joint stipulation, is to be guided ordinarily by selections from appellant's solicitor. (Nashua & Lowell R. Corp. v. Boston & Lowell R. Corp., 21 U. S. App. 50; 61 Fed. Rep. 237.) If part of the record is omitted from the transcript, and it does not appear that the omitted parts are necessary to the hearing, the appeal will not be dismissed, but the appellee, if he thinks the transcript defective, must resort to a certiorari or other remedy. (Nashua & Lowell R. Corp. v. Boston & Lowell R. Corp., 21 U. S. App. 50; 61 Fed. Rep. 237.)

Record—Contents of.—An appeal will not be dismissed for insufficiency of the transcript where the records were burned while the case was pending below. (Cutting v. Taveres O. & A. R. Co., 23 U. S. App. 363; 61 Fed. Rep. 150.) An affidavit filed for use on a motion is not made part of the record by being incorporated in a bill of exceptions (Evans v. Stettnisch, 149 U. S. 605). What shall constitute the record on appeal is regulated by law and rules of the appellate court which the trial court has no power to change (Smith v. McIntyre, 84 Fed. Rep. 721). It is proper for the clerk to require of counsel for appellant or plaintiff in error a praecipe stating what the transcript shall contain, to attach a copy of such praecipe to the transcript and certify that the transcript is full and correct according to the praecipe. (Burnham v. North Chicago St. Ry. Co., U. S. App. 87 Fed. Rep. 168.) The certification to the record should show that it is complete or that the parties designated the papers to be included. (Meyer v. Mansur & T. Co., U. S. App. 85 Fed. Rep. 874.) Where a necessary part of the record has been omitted from the transcript and is subsequently presented, duly certified, it may be made a part of the record by direct order. (Burnham v. North Chicago St. Ry. Co.,

U. S. App., 87 Fed. Rep. 168.) The fact that the transcript shows that certain portions of the record were omitted by direction of appellant's attorney is not necessarily ground for dismissing the appeal (Nashua L. R. Corp. v. Boston & L. R. Corp., 5 U. S. App. 97; 51 Fed. Rep. 929). The jurisdiction of the circuit court of appeals is not defeated by irregularity in the transcript or in its certification (Burnham v. North Chicago St. R'y Co., U. S. App. 87 Fed. Rep. 168). The fact that papers not in the judgment roll are in the transcript and certified by the clerk, does not make them any part of the record on appeal, when not brought into the record by any bill of exceptions, statement of facts, or other recognized way. (Duncan v. Atchison, T. & S. Fe R. R. Co., 44 U. S. App. 427; 72 Fed. Rep. 808.)

RULE 15. TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceeding, in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

RULE 16. DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record

thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown, the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

Enlarging time to file record.—An order, enlarging the time to file the record on appeal, made by a district judge who is not a member of a circuit court of appeals, and who did not sign the citation, is void. (West v. Irwin, 9 U. S. App. 547; 54 Fed. Rep. 419.)

Time to docket cases.—A case will not be dismissed for failure to docket in time where, before the motion is made, the cause has been actually placed on the docket. (West Chicago St. Ry. Co. v. Ellsworth, 46 U. S. App. 603; 77 Fed. Rep. 664.) Neither will a case be dismissed where, by mistake of the clerk, an appeal is docketed as of a date prior to the time when the decree appealed from was in fact entered, but the irregularity was waived. (Elder v. McClaskey, 37 U. S. App. 1; 70 Fed. Rep. 529.)

RULE 17. DOCKET.

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

RULE 18. CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the

first term of the entry of the case; otherwise the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

Certiorari.—The appellate court has no power, by certiorari, upon ex parte affidavits, to cause the record to be amended by inserting a paper which appellant claims was introduced before the master, but of which the latter has no recollection. (Randolph v. Allen, 41 U. S. App. 117; 73 Fed. Rep. 23.)

RULE 19. DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and, if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and, if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous; *provided*, however, that a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit or district court of the United States shall desire to prosecute a writ of error or appeal to this court from any final judgment or decree rendered in the circuit or district court, and, at the time of suing out such writ of error or appeal, the other party to the suit shall be dead, and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And, within thirty days after the filing of the record in this court, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that

said party had a proper representative in some State or Territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the State or Territory or district in which such representative resides; and, upon such suggestion, he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous; *provided*, however, that a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days; *provided*, also, that in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate; and *provided*, also, that the said representative may at any time, before or after said suggestion, come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

RULE 20. DISMISSING CASES.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and

appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it, a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

Dismissal.—An appellant cannot of right dismiss his own appeal; and when an appeal is dismissed on his own motion he is not entitled, in the absence of special equitable considerations, to have the order expressed to be without prejudice. (Donallan v. Tannage Patent Co., U. S. App., 79 Fed. Rep. 385.) Where the determination of a motion to dismiss, or a writ of error and affirm the judgment involves the examination of a voluminous record, it will not be considered in advance of the regular call. (Standard Oil Co. v. Bell, U. S. App., 82 Fed. Rep. 113.) An appeal will be dismissed when appellants have no beneficial or appealable interest. (Inglehart v. Stansbury, 151 U. S. 68; Aiken v. Smith, 2 U. S. App. 445; 54 Fed. Rep. 894.) And when no writ of error is actually issued, and the citation not served (Smith v. Ferst, 30 U. S. App. 87; 66 Fed. Rep. 798); and when, pending proceedings in error, the same person, by means of purchase, has succeeded to the interests of both plaintiff and defendant (Arnold v. Woolsey, 12 U. S. App. 157; 54 Fed. Rep. 268); or when the parties have settled their differences (Benner v. Hayes, 53 U. S. App. 376; 80 Fed. Rep. 953). After an appellee has filed one motion to dismiss the appeal, he has no right to file the second

without leave of the court. (Nashua & L. R. Corp. v. Boston & L. R. Corp., 5 U. S. App. 97; 51 Fed. Rep. 929.) The proper remedy is reversal and not dismissal, when the circuit court has no jurisdiction. (Nashua & L. R. Corp. v. Boston & L. R. Corp., 5 U. S. App. 97; 51 Fed. Rep. 929.) A writ of error which has been allowed, served, and returned to the appellate court with transcript of the proceedings in the trial court, will not be dismissed because the trial court clerk has inadvertently failed to make an indorsement of the filing on the writ itself. (United States Nat. Bank v. First Nat. Bank, 49 U. S. App. 67; 79 Fed. Rep. 296.)

RULE 21. MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

RULE 22. PARTIES NOT READY.

1. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed.

2. Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the case.

3. Where a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

RULE 23. PRINTING RECORDS.

The counsel for the plaintiff in error or appellant shall print and file with the clerk of the court, at least six days before the case is called for argument, twenty copies of the record, unless a different order as to such printing is made by the court, either of its own motion, or upon application made at least ten days before the case is called for argument; and shall furnish three copies of the printed record to the adverse party, at least six days before the argument. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record. If the record shall not have been printed when the case is reached in the regular call of the docket, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

RULE 24. BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least six days before the case is called for argument twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated: (1) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised. (2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and, in cases brought up by appeal, the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report, and the action of the court upon it. (3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited,

so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specifications of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and, when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

Briefs.—The evidence alleged to have been erroneously admitted or excluded must be set out sub-

stantially in the brief and assignment of errors or the alleged errors will not be considered; and an instruction to the jury must be set out, if objected to as erroneous, in order to be considered. (Haldane v. United States, 32 U. S. App. 607; 69 Fed. Rep. 819.) The brief must refer to the pages of the record upon which rejected testimony and the rulings of the court upon it, may be found. (Sipes v. Seymour, 40 U. S. App. 185; 76 Fed. Rep. 116.) Where the brief filed was filled with language attacking the character and intelligence of the court below the brief should be stricken from the files and the party allowed to file a new brief by other counsel. (Kelley v. Boettcher, 49 U. S. App. 620; 82 Fed. Rep. 794.) The 24th rule, prescribing the contents and manner of statement of briefs for plaintiff in error will be enforced by the court, to the end that vital issues in the case may be clearly presented. (City of Lincoln v. Sun Vapor Street Light Co., 19 U. S. App. 431; 59 Fed. Rep. 756.) Failure of counsel, either in his brief or oral argument to allude to one or more of his assignments of error, is a waiver thereof. (American Fibre-Chamois Co. v. Buckskin Fibre Co., 37 U. S. App. 742; 72 Fed. Rep. 508; Branch v. Texas Lumber Mfg. Co., 2 U. S. App. 623; 53 Fed. Rep. 849; Texas & Pac. Ry. Co. v. Reeder, 41 U. S. App. 775; 76 Fed. Rep. 550.) And specifications which, though quoted in the brief, are not therein supported by argument or citation, must be regarded as waived. (Pickham v. Wheeler-Bliss Mfg. Co., 46 U. S. App. 605; 77 Fed. Rep. 663.) The specifications should each conform substantially to the particular assignment of error on which it is based. (Vider v. O'Brien, 18 U. S. App. 711; 62 Fed. Rep. 326.)

RULE 25. ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, *provided,* always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

RULE 26. FORM OF PRINTED RECORDS, ARGUMENTS, AND BRIEFS.

All records, arguments, and briefs printed for the use of the court must be in such form and size that they can be conveniently bound together so as to make an ordinary octavo volume.

RULE 27. COPIES OF RECORDS AND BRIEFS.

The clerk shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, and arguments filed therein.

RULE 28. OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

RULE 29. REHEARING.

A petition for rehearing after judgment can be presented only at a term at which judgment is entered, unless by special leave granted during the term; and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

Rehearing.—Except in special cases, and then only by leave of court, no papers except the petition for rehearing in the form prescribed by the above rule can be admitted. (Gregory v. Pike. 21 U. S. App. 658; 67 Fed. Rep. 837.) A petition not supported by certificate of counsel, as provided by the above rule, should be denied. (Hinds v. Keith, 13 U. S. App. 222, 314; 57 Fed. Rep. 10.) A question which has been

settled by the decision of an appellate court will not be again considered by such court in the same suit. (Alabama G. S. R. Co. v. Carroll, U. S. App., 84 Fed. Rep. 772.) A rehearing will not be granted upon a petition not complying with any of the requisites prescribed therefor by rule of court. (The Dago, 26 U. S. App. 187; 63 Fed. Rep. 183; Merriman v. Chicago & E. I. Ry. Co., 24 U. S. App. 641; 66 Fed. Rep. 663.) A rehearing will not ordinarily be granted for causes not brought to the attention of the court on the original argument. (United States v. Hall, 21 U. S. App. 402; 63 Fed. Rep. 472.) The fact that a case is one of great importance is not sufficient grounds for granting a rehearing, when there is no suggestion that any consideration or authority entitled to weight, has been overlooked. (Camfield v. United States, 32 U. S. App. 123; 67 Fed. Rep. 17.) A rehearing should not be granted where no sufficient reason is shown why the evidence desired was not introduced while the case was regularly open. (The Iron Chief, 22 U. S. App. 473, 846; 63 Fed. Rep. 289.)

RULE 30. INTEREST.

1. In cases where a writ of error is prosecuted in this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interests may be allowed, if specially directed by the court.

Interest.—The purpose of the above rule is to give to suitors whose decrees for the payment of money are affirmed, interest thereon from the date of their entry until paid, if by the State law interest might have been allowed in the State courts in a similar case, and at the rate provided by the State law, but it was not the intention to adopt State rules of practice in reference to the necessity of an express provision in the judgment or decree appealed from for the allowance of such interest. The allowance of such interest, however, is within the power of the circuit court of appeals alone, and when a decree making no provision for interest is affirmed by a mandate which is also silent on the point, the lower court has no power to allow interest (Hagerman v. Moran, 44 U. S. App. 636; 75 Fed. Rep. 97). A party who appeals from a decree in his favor in a collision case is not entitled to interest on the original recovery pending the appeal (The Express, 11 U. S. App. 749; 59 Fed. Rep. 476). Where the only error is in allowing interest the judgment will not be reversed in toto, but the court below will be directed to enter a judgment such as should have been entered in the first place (Pacific Postal Cable Co. v. Fleischner, 29 U. S. App. 227; 66 Fed. Rep. 899).

RULE 31. COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to

the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree of court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party, but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the supreme court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the supreme court.

Costs.—Costs in the appellate court will not be set off against the costs in the trial court so as to prevent the officers of the latter court from collecting the sums due them (Aiken v. Smith, 13 U. S. App. 394; 57 Fed. Rep. 423). Appellant is entitled to costs on reversal of a decree in a collision case on the ground that both vessels were in fault (The Um-

bria, 11 U. S. App. 691; 59 Fed. Rep. 475). Where the decree is modified on appeal only in minor particulars neither party will be given the costs of the appellate court. (New England R. R. Co. v. Carnegie Steel Co., 33 U. S. App. 491; 75 Fed. Rep. 54.) The circuit court of appeals, on reversing a decree for claimants for failure of the record to show jurisdiction in the circuit court, may award defendant costs in both courts. (Tug River Coal etc. Co. v. Brigel, 22 U. S. App. 725; 70 Fed. Rep. 647; Sneed v. Sellers, 30 U. S. App. 8; 68 Fed. Rep. 729; Hunt v. Howes, 41 U. S. App. 152; 74 Fed. Rep. 657.) Where the appeal has substantially prevailed, appellant is entitled to statutory costs. (Northern Trust Co. v. Snyder, 46 U. S. App. 587; 77 Fed. Rep. 818.) Costs of the circuit court, caused by the introduction of a large mass of irrelevant matter, should be borne by the person introducing such matter into the record. (Ecaubert v. Appleton, 35 U. S. App. 221; 67 Fed. Rep. 917.) An appellate court has no power after the end of the term in which the decree is rendered to modify the same as to costs. (Jourolman v. East Tennessee Land Co., 56 U. S. App. 149, 155; 85 Fed. Rep. 251.)

RULE 32. MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo* shall be issued, on the order of this court to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

RULE 33. CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of

any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

RULE 34. MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least ten days before the case is heard or submitted.

2. All models, diagrams, and exhibits of material placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the

requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition as to him may seem best.

COSTS AND FEES IN THE CIRCUIT COURTS OF APPEALS.

Order made by Supreme Court of the United States.

Ordered in pursuance of the Act of Congress of February 19, 1897 (29 Stat. at L. 536, Chap. 263), that the following table of fees and costs in the circuit court of appeals be, and the same is hereby established to take effect on the first day of March, A. D. 1898, and no other fees and costs than those therein named shall thereafter be charged:

Docketing a case and filing the record	$5.00
Entering an appearance	.25
Transferring a case to the printed calendar	1.00
Entering a continuance	.25
Filing a motion, order or other paper	.25
Entering any rule or making or copying any record or other paper, for each one hundred words	.20
Entering a judgment or decree	1.00
Every search of the records of the court and certifying the same	1.00
Affixing a certificate and a seal to any paper	1.00
Receiving, keeping and paying money, in pursuance of any statute or order of the Court, one per cent on the amount so received, kept and paid.	

Preparing the record for the printer, indexing the same, supervising the printing, and distributing the copies, for each printed page of the record and index..	.25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing).....	.20
Issuing a writ of error and accompanying papers or a mandate or other process..	5.00
Filing briefs for each party appearing....	5.00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed $5.00 in the whole for any copy)..	1.00
Attorney's docket fee.....	20.00

[January 10, 1898, 168 U. S. 720; Amended February 28, 1898, 169 U. S. 740.]

See ante, § 168, p. 640.

AMENDED RULES

OF THE

CIRCUIT COURT OF APPEALS.

FIRST CIRCUIT.

The rules originally drawn up for the several Circuit Courts of Appeals were adopted by the court of the first circuit with a few alterations. The original rules will be found on page 1549, *ante*. They have been amended and added to, from time to time, since their adoption. Only such rules as were changed at the time of the adoption of the original rules and those since amended or added are given here.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS AND SESSIONS.

One term of this court shall be held annually at the city of Boston at ten o'clock in the forenoon on the first Tuesday of October. Stated sessions thereof shall be there held at the same hour on the first Tuesday of every month, and may be adjourned to such times and places as the court may from time to time designate. But, unless other-

wise ordered, any adjournment shall be held to have been made to the first day of the next stated session.

[As amended Sept. 15, 1892.]

RULE 4. QUORUM.

1. In the absence of a quorum on any day appointed for holding a term, or on any day to which the court is adjourned, any judge who attends shall adjourn the court from day to day; or if no judge is present the Court shall so adjourn, and in the absence of all the judges and the clerk, the marshal or his deputy shall so adjourn. But the court may from time to time, as provided by rule 3, enter orders directing an adjournment, or adjournments for longer periods than from day to day, or sine die.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process, pending in or returned to the court, preparatory to hearing, trial, or decision thereof.

[As amended October 4, 1898.]

Original Rule 5, ante, p. 1550, was adopted and is still in force in this circuit.

RULE 6. MARSHAL AND OTHER OFFICERS.

The marshal shall be in attendance during the sessions of the court, with such number of bailiffs, messengers, and other officers as the court may from time to time order.

[As amended, Sept. 15, 1892.]

Original Rules 7, 8, 9, 10, 11, and 12, were adopted and are still in force in this circuit.

RULE 13. SUPERSEDEAS AND COSTS BONDS.

1. Supersedeas bonds in the circuit and district courts must be taken with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but, in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On an appeal from an interlocutory order or decree granting, continuing, refusing or dissolving an injunction, the appellant shall, at the time of the allowance thereof, file a bond to the adverse party in such sum as the judge who allowed the appeal shall direct, to answer all costs if he shall fail to sustain his appeal.

[As amended October 4, 1898.]

RULE 14. WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and seal of the court.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case shall be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the

return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty rule No. 52 of the Supreme Court. The testimony in such record shall embrace the viva voce proof in the district court, if the same, or the substance thereof, has been reduced to writing with the approval of its judge. The reasonable cost of so reducing the same to writing may be taxed as a part of the cost of the record, except so far as allowed as costs in the district court.

7. Further proof in instance causes in admiralty shall include only that which could not with diligence have been had at the trial below, or which was there rejected, or was omitted through misapprehension, provided the evidence be accompanied with a certificate of counsel showing reasonable excuse for the misapprehension. Except by order of the court first obtained, merely cumulative proofs shall not be so taken; but for this purpose the evidence of witnesses who had different duties, interests, or opportunities of observation will not ordinarily be held cumulative in cases of collision or other maritime tort.

8. Such further proof may be taken after the appeal is allowed, in the manner provided by law for depositions de bene esse, or by an examiner appointed by any circuit or district judge, or selected by the parties, or upon interrogatories and commissions as provided in rule 44 of the circuit courts of

this circuit, mutatis mutandis. It must be taken and filed forthwith after it is obtainable, but it cannot, except by order of the court, be taken or filed within thirty days before any session at which the cause may be heard as provided in paragraph 2 of rule 17, nor thereafterwards until the cause has been postponed to the next term or session.

9. Objections to further proof shall be filed with the magistrate and returned with the evidence. Within seven days after the evidence is taken, the party so objecting may file in print a motion to suppress the same, with a copy of the objections and a brief. The other party may within seven days thereafter file in print a counter statement and brief. The objections and counter statement, so far as they contain matters of fact dehors the record, shall be verified by affidavit. The court will consider the objections in advance of the trial, or in connection therewith, as it may in each case determine, and without oral argument, and will order suppressed evidence not rightfully taken. The party taking the evidence so suppressed shall pay the costs arising therefrom, including the printing thereof.

10. Nothing herein shall exclude applications for leave to take further proof, or objections thereto, in advance of the taking thereof, or objections touching the formalities of taking it; but the latter must be brought to the attention of the court forthwith after the evidence is filed.

[As amended, Sept. 15, 1892.]

Original Rule 15, ante, p. 1569, was adopted and is still in force in this circuit.

RULE 16. DOCKETING CASE.

1. The plaintiff in error or appellant shall docket the case, and file the record thereof, on or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any circuit or district judge, may enlarge the time, the order of enlargement to be filed in this court.

2. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, whether in term time or in vacation, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, the return day of the citation, and that the writ of error or appeal was duly sued out or allowed. And the plaintiff in error or appellant shall not be entitled to docket the case or file the record, after the same shall have been docketed and dismissed under this rule, unless by order of the Court after notice to the adverse party.

But the defendant in error or appellee, may at his option, docket the case and file the record; and, if the case is docketed and the record filed by the plaintiff in error or appellant within the time prescribed by this rule, or by defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. On the filing of the record the appearance

of the counsel for the party docketing the case shall be entered.

[As amended Oct. 4, 1898.]

RULE 17. DOCKET AND CALENDARS.

1. The clerk shall enter and number on the docket all cases consecutively in their proper chronological order.

2. He shall print at least twenty days before the first Tuesdays of October, January and April, respectively, a calendar of all pending cases arranged by districts in the following order: Maine, New Hampshire, Rhode Island and Massachusetts.

[As amended Oct. 4, 1898.]

Original Rules 18, 19, and 20, ante, pp. 1571-1575, were adopted and are still in force in this circuit.

RULE 21. MOTIONS.

1. The motion day shall be the first Tuesday of every stated session of the court, and any other Tuesday while the court shall remain in session.

2. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

3. All motions to dismiss writs of error or appeals (except motions to docket and dismiss under rule 16), or to advance cases, or for a writ of certiorari, and other special motions, shall be printed, and be accompanied by printed briefs.

4. No motion to dismiss, except on special assignment of the court, shall be heard, unless previous notice has been given to the adverse party or his counsel.

5. Any motion of which counsel shall have given notice to the clerk in advance shall be entered on the clerk's list in the order in which he receives notice thereof, and shall have priority in that order before other motions, unless otherwise specially ordered by the court.

6. Half an hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

[As amended Sept. 15, 1892.]

RULE 22. CALL AND ORDER OF THE CALENDAR.

1. On the first Tuesdays of October, January, and April, the court will commence calling cases for argument in the order in which they stand on the calendar, and proceed from day to day during the session in the same order, except as hereinafter provided.

2. Where no counsel appears and no brief has been filed for the plaintiff in error or appellant when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed.

3. When the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the case.

4. When a case is reached in the regular call of the calendar, and there is no appearance for

either party, the case shall be dismissed at the cost of the plaintiff.

5. If the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready, the case may be dismissed, or be postponed to the next session for the same district, as the court may order.

6. If a case is called for hearing at two stated sessions successively, and upon the call at the second session neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

7. The court may, by order entered on the first day of any stated session, make special assignments for the purpose of grouping cases in which the same judges are to sit.

8. No case coming from the district of Massachusetts shall be called before the second Tuesday of the session.

9. The court will not hear arguments on Mondays or Saturdays, unless for special cause it shall so order.

10. Five cases shall be considered as liable to be called on each day during a stated session; but, on the coming in of the court on each day, the entire number of five cases will be called, with a view to the disposition of such of them as are not to be argued.

11. Revenue and other cases in which the United States are concerned, and which also involve or affect some matter of general public in-

terest, and criminal cases, and cases once adjudicated by this court on their merits and again brought up by their writ of error, or appeal, may be advanced by leave or order of the court.

12. Two or more cases involving the same question may, by leave of the court, be heard together, to be argued as one case or more, as the court may order.

13. No stipulation or agreement of counsel to pass or postpone a case, or to substitute one case for another, shall be recognized as binding. A case can only be so passed, postponed, or substituted upon application made and leave granted in open court.

[As amended Sept. 15, 1892.]

RULE 23. PRINTING RECORDS.

1. In all cases, the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of the printing the record, and of his fee for preparing it for the printer, and shall notify the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when the case is reached at the regular call of the docket, the case may be dismissed.

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed under the clerk's supervision, for the use of the court and of counsel.

4. The clerk shall take to the printer the original transcript on file, but shall cause copies to be made for the printer of such original papers sent up under rule 14, or other original papers, as are necessary to be printed.

5. The clerk shall supervise the printing, and see that the printed copies are properly indexed; and he shall distribute printed copies to the judges and the reporter, from time to time, as required, and three copies to the counsel of each party. An additional number of copies may be printed at the request of either party for his own use and at his own expense, or by order of the court.

6. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record.

7. The clerk may receive from either party, and use as parts of the printed record, so far as the same may be proper and convenient size and type, any portions which have been printed in any other court, and also printed copies of patents and other exhibits, allowing the party furnishing the same such sum therefor as the clerk deems reasonable, to be added to and form a part of the cost of printing.

8. The clerk shall receive from the party at whose expense the record is printed, in addition to

the cost of printing, fifteen cents for each printed page of the record and index, in full for preparing the record for the printer, indexing the same, supervising the printing, distributing the copies, and for all other incidental services relating to the subject-matter of this rule, to be accounted for with his emoluments.

9. In the case of reversal, affirmance, or dismissal, with costs, the cost of the printing the record and the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

[As amended Oct. 4, 1898.]

Original Rules 24, 25, 26, 27, and 28, ante, pp. 1578-1582, were adopted and are still in force in this circuit.

RULE 29. REHEARING.

A petition for rehearing after judgment may be filed at the term at which the judgment is entered and within one calendar month after such entry, and not later, unless by leave granted during the term. It must be in print in the form and style required by Rule 26, and it must briefly and distinctly state its grounds, and be supported by a certificate of counsel. It will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it and a majority of the court so determines. Provided, whenever a judgment is entered within less than a month before the term adjourns, the petition may be filed within a month after entry of judgment, and with

the same effect after the term as though filed before the adjournment.

[As amended Oct. 4, 1898.]

Original Rules 30 and 31, ante, pp. 1583-1584, were adopted and are still in force in this circuit.

RULE 32. MANDATE.

In every case finally determined, a mandate or other proper process in the nature of a procedendo shall be issued to the court below for the purpose of informing that court of the proceedings in this court, so that further proceedings may be had in the court below as to law and justice may appertain. Such mandate, or other process, may issue at any time on the order of the court; but unless otherwise ordered, it shall issue as of course, after two calendar months from the entry of judgment, unless a petition for a rehearing has been filed and remains undisposed of.

[Amended Oct. 4, 1898.]

Original Rule 33, ante, p. 1586, was adopted and is still in force in this circuit.

RULE 34. ERROR IN CRIMINAL CASES.

On or after the allowance of a writ of error in a criminal case cognizable by this court, the justice or judge who allowed the writ, or the court which entered the judgment, or any judge thereof, shall have power to admit to bail the plaintiff in error, according to the rules of law applicable to his case.

And it is further ordered, the clerk shall cause

to be printed two hundred copies of the foregoing order amending the rules, and he shall distribute the same to the members of the bar; and further, under the direction of the circuit judges, he shall arrange with some suitable publisher for the publication of the rules as amended, in such form and on such terms as the circuit judges may direct.

SECOND CIRCUIT.

The rules of the second circuit which differ from those originally drawn up for the several circuit courts of appeals, are here given in full. The original rules are given on page 1549.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS.

One term of this court shall be held annually at the city of New York on the last Tuesday of October, and shall be adjourned to such times and places as the court may from time to time designate.

[As originally adopted by the court.]

Original Rules 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, ante, pp. 1550-1577, were adopted and are still in force in this circuit.

RULE 23. PRINTING RECORDS.

On the filing of the transcript, in every case, the clerk shall forthwith cause fifteen copies of the same to be printed, and shall furnish three copies thereof to each party, at least thirty days before the

argument, and shall file nine copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record. The clerk shall be entitled to demand of the appellant, or plaintiff in error, the cost of printing the record, before ordering the same to be done. If the record shall not have been printed when the case is reached for argument, for failure of a party to advance the costs of printing, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

[As amended Oct. 19, 1891.]

RULE 24. BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least twenty days before the case is called for argument, ten copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order stated:

(1.) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2.) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and, in cases

brought up by appeal, the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of the evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to todidem verbis, whether it be in instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report, and the action of the court upon it.

(3.) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk, at least ten days before the case is called for hearing, ten copies of his printed brief, one of which shall, on application, be furnished to each of the counsel on the opposite side. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as

required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and, when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. Where no counsel appears for one of the parties and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As amended Oct. 19, 1891.]

RULE 25. ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Upon writs of error, and appeals in customs cases and appeals from orders granting or refusing a preliminary injunction, one hour on each side;

and in other cases two hours will be allowed for the argument, and no more, without special leave of the court granted before argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion; provided always that a fair opening of the case shall be made by the party having the opening and closing arguments.

[As amended March 9, 1896 (78 Fed.), Nov. 5, 1897 (82 Fed.)]

Original Rules 26, 27, 28, 29, 30, 31, 32, 33, and 34, ante, pp. 1581-1688, were adopted and are still in force in this circuit. The order made by the supreme court with reference to fees and costs in the circuit courts of appeals, ante, p. 1588, is still controlling in this court.

RULE 35. WRIT OF ERROR OR APPEAL, ALLOWANCE OF.

1. An appeal or writ of error from a circuit court or a district court to this court in the cases provided for in sections 6 and 7 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and acts to amend said act approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice or by any circuit judge within the circuit, or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of

proceedings, pending such writ of error or appeal.

2. Where such writ of error to this court is allowed in the case of a conviction of an infamous crime or in any other criminal case in which it will lie, the circuit court or district court or any justice or judge thereof, shall have power after the citation is served, to admit the accused to bail in such amount as may be fixed.

[Adopted May 3, 1897, 79 Fed. 3.]

RULE 36.

In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking with the clerk, for the payment of his fees, or otherwise satisfy him in that behalf.

At the expiration of ten days after a case has been decided the order or decree thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said ten days the parties may file with the clerk their proposed orders or decrees and bills of costs with proof of service of the same upon the opposing attorneys.

[Promulgated May 18, 1898, 86 Fed.]

The table of fees prepared by the supreme court of the United States, ante, is controlling on the subject in this circuit.

RULES IN ADMIRALTY.

[The following amended rules in admiralty were adopted Oct. 5, 1892. The original admiralty rules were adopted May 20, 1892, but were amended and readopted on the first-named date.]

I. APPEALS AND NEW PLEADINGS.

An appeal to the circuit court of appeals shall be taken by filing in the office of the clerk of the district court and serving on the proctor of the adverse party, a notice, signed by the appellant or his proctor, that the party appeals to the circuit court of appeals from the decree complained of.

The appeal shall be heard on the pleadings and evidence in the district court, unless the appellate court, on motion, otherwise order.

II. NOTICE AND BOND.

Section 1. When a notice of appeal is served, the appellant shall file in the clerk's office of the district court a bond for costs of the appeal, with sufficient surety in the sum of two hundred and fifty dollars, conditioned that the appellant shall prosecute his appeal to effect, and pay the costs if the appeal is not sustained. Such security shall be given within ten days after filing the notice, or the appeal shall be deemed abandoned, and the decree of the court below enforced, unless otherwise ordered by a judge of this court.

Sec. 2. And if the appellant desires to stay the execution of the decree of the court below, the bond which he shall give shall be a bond with sufficient security in such further sum as the judge of the district court or a judge of this court shall order, conditioned that he will abide by and perform whatever decree may be rendered by this court in the cause, or on the mandate of this court by the court below.

Sec. 3. The appellant shall, on filing either of such bonds, give notice of such filing, and of the names and residences of the sureties; and if the appellee, within two days, excepts to the sureties, they shall justify, on notice, within two days after such exception.

III. REVIEW IN PART ONLY.

The appellant may also, at his option, state in his notice of appeal that he desires only to review one or more questions involved in the cause, which questions must be clearly and succinctly stated; and he shall be concluded in this behalf by such notice, and the review upon such an appeal shall be limited to such question or questions.

IV. APOSTLES ON APPEAL, TO CONTAIN.

Section 1. The apostles, on an appeal to this court shall, in cases where a general notice of appeal is served, consist of the following:

(1.) A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of

the suit; the names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed; whether or not the defendant was arrested, or bail taken, or property attached or arrested, and, if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner or commissioners; and, if so, the result of the proceedings and report thereon; the date of the entry of the interlocutory and final decrees; and the the date when the notice of appeal was filed.

(2.) All the pleadings, with the exhibits annexed thereto.

(3.) All the testimony and other proofs adduced in the cause.

(4.) The interlocutory decree, and any order of the court which the appellant may desire to have reviewed on the appeal.

(5.) Any report of a commissioner or commissioners to which exception may have been taken, with the order or orders of the court respecting the same, and the exceptions to the report, and so much of the testimony taken in the proceeding as may be necessary to a review of the exceptions.

(6.) All opinions of the court, whether upon interlocutory questions or finally deciding the cause.

(7.) The final decree and the notice of appeal. And

(8.) The assignment of error.

Sec. 2. All other papers shall be omitted unless otherwise ordered by the judge who heard the cause.

Sec. 3. Where the appellant shall appeal specially and seek only to review one or more questions involved in the cause, the apostles may, by stipulation between the proctors for the respective parties, contain only such papers and proceedings and evidence as are necessary to review the questions raised by the appeal.

V. CERTIFYING RECORDS.

The appellants shall, within thirty days after giving notice of appeal, procure to be filed in this court the apostles certified by the clerk of the district court, or, in case of a special appeal, the stipulated record, with the certification by the said clerk of all papers contained therein on file in his office.

VI. IF APPEARANCE OF APPELLEE NOT ENTERED.

If the appellee does not cause his appearance to be entered in this court within ten days after service on his proctor of notice that the apostles are filed in this court, the appellant may proceed ex parte in the cause, and have such decree as the nature of the case may demand.

VII. NEW ALLEGATIONS, ETC.

Upon sufficient cause shown, this court, or any judge thereof, may allow either appellant or appel-

lee to make new allegations, or pray different relief, or interpose a new defense, or take new proofs. Application for such leave must be made within fifteen days after the filing of the apostles, and upon at least four days' notice to the adverse party.

VIII. NEW PLEADINGS. NEW TESTIMONY.

If leave be granted to make new allegations, pray different relief, or interpose a new defense, the moving party shall, within ten days thereafter, serve such new pleading, duly verified, on the adverse party, who shall, if such pleading be a libel, within twenty days answer on oath.

If leave be given to take new testimony, the same may be taken and filed within thirty days after the entry of the order granting such leave, and the adverse party may take and file counter testimony within twenty days after such filing.

IX. NEW TESTIMONY. HOW TAKEN.

Such testimony shall be taken by deposition before any United States commissioner or notary public, upon reasonable notice in writing given to the opposite party; or by commission issued out of this court, with interrogatories annexed. Upon proper cause shown the court may grant an open commission.

X. PRINTING NEW PLEADINGS AND TESTIMONY.

If new pleadings are filed or testimony taken in this court, the same shall also be printed and fur-

nished by the clerk, as in the twenty-third general rule provided.

XI. MOTIONS.

All motions shall be made upon at least four days' notice.

XII. WRIT OF INHIBITION.

A writ of inhibition may be awarded by this court on motion of the appellant, to stay proceedings in the court below, when circumstances require.

XIII. MANDAMUS.

A mandamus may, in like manner, be obtained, to compel a return of the apostles when unreasonably delayed by the clerk or court below.

XIV. CASES TO BE PLACED ON DOCKET.

Each case shall be placed on the docket as soon as the printing of the apostles is completed by the clerk.

XV. BRIEFS.

Section 1. Counsel for the appellant shall file with the clerk of this court, at least twenty days before the case is called for argument, ten copies of the printed brief, and shall, at the same time, serve two copies thereof on the proctors of record, or on the counsel engaged upon the opposite side. This brief shall contain, in order here stated:

(1.) A statement of the nature of the appeal, the court from which the appeal is taken, and a

concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they are raised.

(2.) If the pleadings have been amended in this court, or new proofs have been taken, it shall be stated what amendments have been made, and in what respect the new proofs have changed, or tended to change, the case as made in the court below.

(3.) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the folios of the record or to the numbers of the questions, and the authorities relied upon in support of each point.

Sec. 2. The counsel for the appellee shall file with the clerk of the court ten printed copies of his brief, and serve two copies thereof at least ten days before the case is called for argument. His brief shall be of a like character with that required of the appellant, and, in case new proofs are taken on behalf of the appellee, the brief shall so state, and wherein the new proofs have changed the case as made in the court below.

Sec. 3. The reasonable expense of printing briefs shall be an item of taxable costs.

XVI. MANDATES.

The decrees of this court shall direct that a mandate issue to the court below.

[As amended May 18, 1898, 86 Fed.]

XVII. EXTENSION OF TIME.

The time specified in the foregoing rules for any proceeding may be extended by order of a judge of this court.

XVIII. WHEN RULES OF DISTRICT COURTS TO APPLY.

In all matters in civil causes of admiralty and maritime jurisdiction, not expressly provided for by the foregoing rules of this court, the rules of practice of the district court of the district in which the cause was decided, being in force at the time (not being inconsistent with these rules), will be adopted so far as may seem proper.

XIX. WHAT GENERAL RULES SHALL BE DEEMED ADMIRALTY RULES.

The following of the general rules of this court, and no others, shall be deemed admiralty rules, viz: Rules 3, 4, 5, 6, 7, 9, 11, 12; section 4 of rule 14; rules 15, 16, 17, 18, 19, 20, 21, 22; amended rule 23; section 5 of rule 24; rules 25, 26, 27, 28, 29; section 4 of rule 30; rules 31, 32, 34, and 36.

[As amended May 18, 1898.]

THIRD CIRCUIT.

The rules of the third circuit which differ from those originally drawn up for the several circuit courts of appeal are here given in full. The original rules will be found, *ante*, p. 1549-1589.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in the third circuit.

RULE 3. TERMS.

The terms of this court shall commence and be held on the first Tuesday in March, and the third Tuesday in September, at the city of Philadelphia.

[As amended Oct. 13, 1893.]

Original Rules 4, 5, and 6, ante, pp. 1550-1551, were adopted and are still in force in this circuit.

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the supreme court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the supreme court of the United States, and on subscribing the roll; but no fee shall be charged therefor; and all attorneys and counselors of the circuit court of the United States for the third circuit shall be attorneys and counselors of this court without taking further oath.

[As originally adopted.]

Original Rules 8, 9, 10, 11, 12, and 13, ante, pp. 1552-1565, were adopted and are still in force in this circuit.

RULE 14. WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any writ of error may be directed, upon being paid or tend-

ered his fees therefor, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal to review and judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safekeeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and mari-

time jurisdiction shall be made up as provided in general admiralty rule No. 52 of the supreme court.

[As originally adopted.]

Original Rules 15, 16, 17, 18, 19, 20, 21, and 22, ante, pp. 1569-1577, were adopted and are still in force in this circuit.

RULE 23. PRINTING RECORDS.

1. On the filing of the transcript, the clerk shall forthwith cause twenty copies of the record to be printed, and shall furnish three copies thereof to each party at least six days before the case is called for argument, and shall file fourteen copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record. The clerk may demand of the plaintiff in error or appellant the cost of printing the record before ordering the same to be done. If the record shall not have been printed when the case is reached in the regular call of the docket because of the failure of a party to advance the cost of printing, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom the costs are given.

2. The clerk shall receive from either party, and use as parts of the printed record, so far as the same may be of proper and convenient size

and type, any portions which have been printed in any other court, and also printed copies of patents and other exhibits, allowing the party furnishing the same such sum therefor as the clerk deems reasonable, to be added to and form a part of the cost of printing.

[As amended December 7, 1893.]

ORDERED that, except upon special allowance by the court or a judge, no cause shall be placed on the docket for argument unless the transcript shall have been filed by the clerk, under Rule 23, at least ten days before the first day of the term.

[The above order was made March 18, 1895.]

Rules 24, 25, 26, and 27, now in force in this circuit, are identical with the original rules of the same number, ante, pp. 1578-1881.

RULE 28. OPINIONS OF THE COURT.

1. All written opinions delivered by the court shall be delivered to the clerk and recorded.

2. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but, at the end of each term, the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and, when so bound, they shall be deemed to have been recorded, within the meaning of this rule.

[As originally adopted.]

ORDER.

It is ordered that hereafter there shall be but a

single court docket, and no "special docket," and cases shall be placed thereon as follows:

1. Those cases on the trial or hearing of which both of the circuit judges shall be competent to sit.

2. Those cases on the trial of which the circuit judge oldest in commission shall be competent to sit.

3. Those cases on the trial or hearing of which the circuit judge youngest in commission, but not the other circuit judge, shall be competent to sit.

Under, and with respect to, each of these three general divisions there shall be placed first in order on the docket those cases in which the district judge assigned for the term shall be competent to sit, and immediately thereafter the cases in which he shall not be competent to sit.

Subject to the foregoing, cases shall be arranged in proper chronological order as heretofore.

[Ordered December 7, 1892.]

Original Rules 29, 31, 32, 33, and 34, ante, pp. 1582-1588, were adopted and are still in force in this circuit. Original Rule 30 was adopted, except that the words "or territory" were omitted after the word "State." Otherwise it is still in force. The order made by the supreme court with reference to fees and costs, ante, p. 1588, is in force and is controlling in this court.

FOURTH CIRCUIT.

The rules of the fourth circuit which differ from those originally drawn up for the several circuit courts of appeals are here given in full. The original rules will be found, ante, pp. 1549-1588.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in the fourth circuit.

RULE 3. TERMS.

There shall be held in the city of Richmond, Virginia, three regular terms of this court—one on the first Tuesday of February, one on the first Tuesday of May, and one on the first Tuesday of November, in each year.

Original Rules 4, 5, and 6, ante, pp. 1550-1551, were adopted by the court and are still in force in the fourth circuit.

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the supreme court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the supreme court of the United States, subscribing the roll, and on payment of a fee of five dollars.

[As amended May 29, 1896.]

Original Rules 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, ante, pp. 1552-1577, were adopted and are still in force in the fourth circuit.

RULE 23. PRINTING RECORDS.

1. Hereafter all records shall be printed under the supervision of the clerk, by such printer and at such rate as the court may designate.

2. Upon the payment of the estimated cost of printing, together with the supervising fees as established by law (which amounts shall be deposited with the clerk within ten days after notice there-

of), the clerk shall cause to be printed thirty copies of the record, twenty copies of which shall be filed for the use of the court, three copies furnished to the adverse party, and the remaining copies delivered to the appellant or plaintiff in error at least ten days before the term or adjourned term.

3. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record.

4. If the record shall not have been printed when the case is reached in the regular call of the docket, the case may be dismissed.

5. In case of reversal, affirmance or dismissal, with costs, the amount paid for the printing of the record and the clerk's fees for supervising the same shall be taxed against the party against whom costs are given.

[As amended May 19, 1898.]

Copies of record and brief.—Where the case is docketed and the record filed before the return day, as prescribed by the above rule, the appeal will not be dismissed, although appellant so long delayed the filing of the record that it was impossible for him to file and furnish to the opposite parties the printed copies of the record and brief within the time prescribed (Jones v. Mann, 25 U. S. App. 700; 72 Fed. Rep. 85).

RULE 24. PRINTING BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of this court, at least

ten days before every term or adjourned term, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated,

(1) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and, in cases brought up by appeal, the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be in instructions given, or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report, and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief, at least three days before the term or adjourned term. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard except at the request of th court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and, when a defendant in error or an appellee is in default, he will not be heard except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As amended February 4, 1892.]

Original Rule 25, ante, p. 1581, was adopted and is still in force in this circuit.

RULE 26. FORM OF PRINTED RECORDS, ARGUMENTS, AND BRIEF.

All records, arguments and briefs printed for the use of this court shall be in small pica type, 24 pica ems to a line, with an index, and a suitable cover, containing the title of the court and cause, the court from which the case is brought into this court, and the number of the case. Size of pages to be $9\frac{1}{4} \times 6\frac{1}{4}$ inches, except that in patent cases the size of the pages shall be $10\frac{3}{4} \times 7\frac{5}{8}$ inches; that is to say, large enough to bind in copies of patent-office drawings and specifications without folding. So much of the record as was printed in the court below may be used in this court if it conforms to this rule.

[As amended February 4, 1892.]

RULE 27. COPIES OF RECORDS AND BRIEFS.

The clerk shall cause to be bound and shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, and arguments filed therein.

[As amended May 29, 1896.]

RULE 28. OPINIONS OF COURT.

1. All opinions delivered by the court shall be printed under the supervision of the judge delivering the same, or of one of the circuit judges, the cost of such printing to be paid by the clerk out of the revenues of his office and charged to the liti-

gants in the respective cases, to be taxed and allowed as other costs.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. The clerk of this court shall, from time to time, cause two sets of the printed opinions of this court to be bound in a substantial manner into volumes, one set to be kept in the clerk's office and one set to be kept in the court library.

[As amended May 29, 1896.]

Original Rules 29, 30, 31, 32, 33, and 34, ante, pp. 1582-1588, were adopted and are still in force in the fourth circuit; and the order made by the supreme court with reference to fees and costs in the circuit courts of appeals, ante, pp. 1588-1589 is controlling in this circuit.

RULE 35.

Ordered, that hereafter the clerk in making his docket shall not set down for argument any cause for any Saturday of the term for which such docket is intended, and that this court will meet on said days for consultation only.

[Adopted May 29, 1893.]

The order of the supreme court with reference to fees in the circuit court of appeals, ante, pp. 1588-1589, is in force in this circuit.

ORDER.

Attendance of District Judges. Notice.

It is ordered that the clerk of this court shall, thirty days before the commencement of each term thereof, notify one of the district judges of this circuit, commencing with the oldest in commis-

sion, that his presence is desired during said term, as a member of the court; *provided*, that if the chief justice, or either of the circuit judges, prior to the commencement of any term, advise the clerk of their inability, or the inability of either of them, to attend and remain during the then coming term of court, then the clerk shall, in manner hereinbefore mentioned, notify and request the presence of an additional district judge, to sit in the place of the judge or judges so unable to attend.

And the clerk shall continue to so notify and request the presence of the district judges, to attend the terms of this court, in the order of the seniority of their commissions, until each of the district judges of this circuit shall have so participated in the proceedings of this court, and thereafter he shall continue in the same order to so notify and request their presence for the subsequent terms of this court; and *provided*, also, that if any district judge so notified informs the clerk of his inability to attend the term at which his presence was requested then the clerk shall so notify the district judge next in commission, and request his presence.

And if, during any term of this court, less than a full bench should be present for business, then those so present shall determine which of the district judges of the circuit shall be called to attend and sit with them during the absence of those so constituting the court for said term, if the presence of an additional judge be deemed necessary.

[Adopted October 19, 1892.]

INSTRUCTIONS WITH REGARD TO TAKING APPEALS, WRITS OF ERROR, MAKING UP RECORDS, ETC.

Clerk's Office, United States Circuit Court of Appeals,
Fourth Circuit.

Richmond, July 1, 1896.

In taking appeals and writs of error, and in making up the transcripts of record to this court, it is necessary that some uniform method shall be followed. Owing to the diverse local practice in the several states of the circuit, there cannot be uniformity while such local practice is adhered to in merely matters of form. These instructions are published with the sanction of the court, and attorneys and clerks are respectfully requested to follow them as to matters of form and practice.

HENRY T. MELONEY,
Clerk.

Method of Taking Appeals.

Writs of error and citations are no longer made returnable to the term day of the appellate court, but are made returnable not exceeding thirty days from the day of signing the citation, whether that day, which is the return day, fall in vacation or in term time; and the record must be filed in the clerk's office of this court before the return day, unless the time be enlarged as provided in section 1 of Rule 16. In that case the order of enlargement must be filed with the clerk of this court. Rule 11, "Assignment of Errors," requires the plaintiff in error, or appellant, to file with the court below with his petition for the writ of error or appeal, an assignment of errors, etc. This practically abolishes the necessity of pursuing the old method of praying appeals in "open court"; and all appeals and writs of error should be prayed for by petition in writing addressed to the court below, or to the judge in vacation, who

allows the writ or the appeal, by an order in writing, approves the appeal or supersedeas bond, and signs the citation. In cases brought up by writ of error, from either the circuit or district courts, the clerk of the circuit court or the clerk of this court issues the writ of error, which writ fixes the return day of the writ to this court, and the citation should bear the same return day. But in cases of appeal (in admiralty or in equity) the citation alone fixes the return day.

All appeals, therefore, whether by writ of error or appeal, should hereafter be taken in the following manner:

(1) Petition in writing for the appeal, or writ of error, addressed to the court below, or the judge thereof, in vacation.

(2) The petition must be accompanied by an assignment of errors, and a prayer for reversal.

(3) Appeal or writ of error bond, approval thereof, and the signing of the citation by the judge allowing the appeal or writ.

(4) Order in writing of the judge allowing the writ of error or appeal.

(5) Issuing of the writ of error by the clerk of the circuit court or of this court.

(6) In case it is desired to have the writ of error issued by the clerk of this court, a certified copy of the petition and order allowing the writ, under the seal of the court, with a fee of $5 for issuing it, must be transmitted to the clerk of this court, and the writ will be issued and forwarded to the clerk of the court below.

All of the above papers and proceedings should be filed with the clerk of the lower court, and incorporated into and certified up in the record by him to this court, except the writ of error and the citation, the originals of which, after having been duly served, must be attached to and bound in the record at their respective places. (For service of writ of error, see

section 1007, Rev. St.) Rules of this court, blank writs of error, appeal and supersedeas bonds, citations and orders of appearance, may be had of the clerks of the lower courts, or of the clerk of this court, upon application.

Making up Records.

In making up a transcript of the record, clerks are requested to make a distinct title or heading to each paper or proceeding copied into the record, with the date of filing the same, or the date of such proceeding, and to write upon but one side of the paper, in a clear, legible hand; and a complete index should be made and attached to the record, at the beginning of it. In order to have uniformity records should be commenced with the style and term of the court at which the judgment or decree is entered, after the following form:

The United States of America, ————

District of ————, towit:

At a circuit (or district) court of the United States for the ———— district of ————, begun and held at the courthouse in the city of ————, on the first Monday of ————, being the ———— day of the same month, in the year of our Lord one thousand eight hundred and ninety- ——.

Present: The Honorable ————,

Circuit Judge.

or

————

Judge of the ———— District of ————.

Among others were the following proceedings, to-wit:

A. B. } In Equity (or)
vs. } In Admiralty (or)
C. D. } At Law.

Bill of Complaint (or)

Libel (or)

Declaration (or complaint).

Filed ————, 189—, (date of filing).

(Copy same, with indorsements, and any accompanying papers and exhibits, and so on with every paper or proceeding in the case.) Every paper or proceeding should have a distinct heading or title of what it is that follows under it, and the date of the filing of the paper, or proceeding. A complete record, as required by rule 14, must be made in all cases (for record in admiralty cases see section 6 of that rule); but as to the general order of making up a record, the following examples are given:

In Equity.

1. Style of court as above.
2. Bill of complaint, etc.
3. Process.
4. Marshal's return.
5. Answer.
6. Replication.
7. Testimony and exhibits for complainant.
8. Testimony and exhibits for defendant.
9. Testimony and exhibits in rebuttal (if any).
10. Opinion.
11. Decree.
12. Petition for appeal.
13. Assignment of errors.
14. Appeal bond and approval.
15. Order allowing appeal.
16. Citation.
17. Clerk's certificate.

In Admiralty.

1. Style of court.
2. Libel.
3. Process.
4. Marshal's return.
5. Claim.
6. Stipulation.
7. Answer.
8. Testimony and exhibits for libelant.
9. Testimony and exhibits for respondent.
10. Testimony and exhibits in rebuttal (if any).
11. Opinion.
12. Decree.
13. Petition for appeal.
14. Assignment of errors.
15. Appeal bond and approval.
16. Order allowing appeal.
17. Citation.
18. Clerk's certificate.

At Law.

1. Style of court.
2. Declaration.
3. Process.
4. Marshal's return.
5. Plea or demurrer, etc.
6. Joining of issue.
7. Impaneling jury.
8. Verdict.
9. Judgment.
10. Bill of exceptions.
11. Petition for writ of error.
12. Assignment of errors.
13. Bond and approval.
14. Order allowing writ.
15. Writ of error.
16. Citation.
17. Clerk's certificate.

The numerical order of the above list of proceedings may be transposed whenever the order of proceeding is different. Of course, it is impossible to give information and directions to cover the details of every case, for there are not two cases alike; but the above does cover the substantial parts of every case. While a full record is necessary, yet it is expected that counsel on both sides will exercise care that no matter not necessary to a full and complete review of the case shall be put into the record, Whenever any agreement shall be entered into by counsel with regard to the making up or the printing of the record under Rule 23. the agreement must be copied into the record. All records are transmitted to the appellate court by order of the court below; and if such order is not expressed in writing, it is implied, and the clerk should always enter immediately preceding his certificate the following order:

"And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States circuit court of appeals for the fourth circuit; and the same is transmitted accordingly.

"Teste: ————, Clerk."

Then comes the general certificate of the clerk, in the usual form, that the foregoing is a full and true record, etc., with the seal of the court attached.

Docketing Cases and Printing Records.

Upon a record being filed, the case is docketed and put upon the calendar for argument at the next term or adjourned term occurring thereafter, provided the record has been or can be printed twenty days before the said term or adjourned term. Counsel transmitting a record to this court must accompany same with an order for their appearance for the appellant

or plaintiff in error, and also with a deposit of $25 for account of costs of this court. The clerk of this court will, immediately upon a record being filed without having been printed under Rule 23, send to the counsel an estimate of the cost of printing, which amount must be deposited before the record will be printed. In case records are printed by counsel before filing the same, they should be printed strictly in accordance with Rule 26. A headline at the top of each page, containing the title of the case, should also be printed in the records, so that, when bound in volumes, there shall be not only uniformity in appearance and style, but the eye will be enabled to catch the particular case at once upon opening the volume. It is important that records should be made up and forwarded to this office as promptly as possible after the appeal or writ is allowed, and not held until the near approach of the next term; especially so when the records are to be printed after filing. It will enable the printer to give more time and attention to the printing, and insure the cases being ready, and the work more correctly done. No record, when once filed, can be withdrawn for the purpose of having it printed elsewhere.

FIFTH CIRCUIT.

The rules of the fifth circuit which differ from those originally drawn up for the several circuit courts of appeals, are here given in full. The original rules will be found, ante, pp. 1549-1588.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in the fifth circuit.

RULE 3. TERMS.

One term of this court shall be held annually at the city of New Orleans on the third Monday of

November, and shall be adjourned to such times and places as the court may from time to time designate.

[As originally adopted.]

Original Rule 4, ante, p. 1550, was adopted and is still in force in this circuit.

RULE 5. CLERK.

1. The clerk's office shall be kept at the city of New Orleans.

2. The clerk shall not practice, either as attorney or counselor, in this court, or in any other court, while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by section 794 of the Revised Statutes, and shall give bond in the sum of ten thousand dollars ($10,000), and with sureties to be approved by the court, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safekeeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room, or from the office, without an order from the court.

[As originally adopted.]

RULE 6. MARSHAL, CRIER, AND OTHER OFFICERS.

1. Every marshal and deputy marshal shall, before he enters on the duties of his appointment, take an oath in the form prescribed by section 782 of the Revised Statutes; and the marshal shall, before he enters on the duties of his office, give bond in the sum of ten thousand dollars ($10,000), and with sureties to be approved by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

[As originally adopted.]

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the supreme court of the United States, or any circuit court of the United States, upon filing certificate of such admission with the clerk of this court, and upon taking an oath or affirmation in the following form, viz: "I, ————, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court uprightly and according to law, and that I will support the constitution of the United States" (a copy of which shall also be filed with the clerk), shall become attorneys and counselors of this court; *provided*, however, that any attorney or counselor eligible to

admission as an attorney and counselor of this court may be admitted to practice, on motion, in open court, upon taking the oath or affirmation as prescribed, and subscribing the roll.

No fees shall be charged by the clerk under this rule.

[As amended November 23, 1893.]

Original Rules 8, 9, 10, 11, 12, and 13, ante, pp. 1552-1565 were adopted and are still in force in the fifth circuit.

RULE 14. WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignments of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge, in any circuit

or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safekeeping, transporting and return of such original paper as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations must be made returnable not exceeding thirty days from the date of signing the citation, whether the term day fall in vacation or term time, and be served before the term day. Provided, however, that all appeals taken from interlocutory decrees under the seventh section of the act entitled "An act to establish circuit courts of appeal, and define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, as said seventh section is amended by an act approved February 18, 1895, shall be made returnable not exceeding ten days from the day of taking the same.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty rule No. 52 of the supreme court.

[As amended June 20, 1895.]

Writs of error, etc.—An authentication stating that "the foregoing is a true, full, and complete transcript of all the papers, orders, and decrees from the files and records of my office," is sufficient. (Pennsylvania Co. etc. v. Jacksonville T. & K. W. R. Co.,

2 U. S. App. 606; 55 Fed. Rep. 131; Jacksonville T. & K. W. Ry. Co. v. American Const. Co., 13 U. S. App. 377; 57 Fed. Rep. 66.)

Original Rule 15, ante, p. 1569, was adopted and is still in force in the fifth circuit.

RULE 16. DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case, and file the record thereof with the clerk of this court, by or before the return day, whether in vacation or in term time. But, for good cause shown, any judge of this court may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed, upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case, and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and, if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of the time above limited

and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

4. In all cases the plaintiff in error or appellant on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction for the payment of his fees, or otherwise satisfy him in that behalf.

Original Rules 17, 18, 19, 20, 21, and 22, ante, pp. 1570-1576, were adopted and are still in force in the fifth circuit.

RULE 23. PRINTING RECORDS.

1. The clerk shall, upon the docketing of a case, forthwith cause an estimate to be made of the cost of printing the record and of his fee for preparing it for the printer and supervising the printing, and shall notify the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it and for want of such payment the record shall not have been printed when a case is reached for hearing on the regular call of the docket, the case shall be dismissed.

2. The clerk shall cause the record in all cases to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish

to the counsel of each party whose appearance shall have been entered, three copies of the printed record, taking a receipt therefor, and the parties may, by written stipulation filed prior to the printing of the record, agree that only parts of the record shall be printed, and the same may be heard only on the parts so printed, but the court may direct the printing of other parts of the record.

3. The clerk shall not take to the printer the original transcript on file, but shall cause copies to be made for the printer of such original papers sent up under Rule 14, or other original papers, as are necessary to be printed.

4. The clerk shall cause at least twenty-five copies of the record to be printed, and may print a larger number on request of either party on payment of the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing and see that the printed record is properly indexed. He shall distribute the printed copies to the judges of the court and to the reporter from time to time, as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the clerk's estimate, the amount of such excess shall be paid to the clerk before he shall deliver or file the printed record or any copies thereof.

6. In case of reversal, affirmance or dismissal

with costs, the amount of the costs of the printing of the record and of the clerk's fees for supervising the same shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

7. The clerk shall receive from either party, and use as parts of the printed record so far as the same may be of proper size and type, any portion which may have been printed in any other court, and also printed copies of patents and exhibits, allowing the party furnishing the same such sum therefor as the clerk deems reasonable, to be added to and form a part of the costs of printing.

[Adopted May 11, 1897, 79 Fed. 3.]

Original Rule 24, ante, p. 1578, was adopted and is still in force in the fifth circuit.

RULE 25. ORAL ARGUMENTS.

[As amended Feb. 27, 1894, 80 Fed. 3.]

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross appeals they shall be argued together as one case and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel shall be heard for each party on the argument of a case.

3. One hour will be allowed for the plaintiff in error or appellant to open and present his case, and one hour will be allowed to the defendant in error or appellee to answer; thirty minutes will then be allowed to the plaintiff in error or appel-

lant to reply. No more time will be allowed for argument without special leave of the court.

Original Rules 26, 27, and 28, ante, pp. 1581-1582, were adopted and are still in force in the fifth circuit.

RULE 29. REHEARING.

A petition for a rehearing after judgment can be presented only during the term at which the judgment is entered, and within twenty days after such entry, unless by special leave granted by the court, and must be printed and briefly and distinctly state its grounds without argument, and be supported by certificate of counsel; and will not be granted or permitted to be argued unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

[As amended Feb. 27, 1894.]

Original Rules 30 and 31, ante, pp. 1583-1586, were adopted and are still in force in the fifth circuit.

RULE 32. MANDATE.

Mandates shall issue in all cases finally disposed of by this court on application of either of the parties at any time after twenty-one days from the date of decision, unless the court or one of the judges shall in the meantime have granted leave to file a petition for rehearing (adopted February 28, 1894); provided that in all cases entitled to precedence in this court under section 7 of the act approved March 3, 1891, the mandate or other proper process may be issued by the clerk after the expiration of seven days from the date of the rendi-

tion of the decree of this court, unless otherwise ordered by the court or one of the judges thereof.

[As amended Feb. 28, 1894.]

Original Rules 33 and 34, ante, pp. 1586-1587, were adopted and are still in force in the fifth circuit.

RULE 35. ASSIGNMENT OF CASES FOR HEARING.

Thirty days prior to the opening of the regular session of the court, the clerk is directed to assign cases for hearing during the first month of the term at the rate of two cases per day for the first three days of each week. Any cases entitled by law to preference in hearing shall be first assigned, and thereafter causes shall be grouped by states, and assignment made so as to permit the hearing of causes from one state before the causes from the next State in order shall be called.

[As adopted June 23, 1892.]

RULE 36.

It is ordered that, whenever a full court of three judges shall not be made up by the attendance of the associate justice of the supreme court assigned to the circuit and the circuit judges, so many of the district judges in the order of seniority of their respective commissions, and qualified to sit, as may be necessary to make up a full court of three judges, are hereby designated and assigned to sit in this court; provided, however, that the court may, at any time, by particular assignment,

designate any district judge to sit as aforesaid.

[Entered June 23, 1893.]

RULE 37. WRITS OF ERROR IN CRIMINAL CASES.

1. Writs of error to review criminal cases tried in any district or circuit court of the United States within this circuit, which may be reviewed under the provisions of the act of March 3, 1891, creating this court, and the act of Congress amendatory thereof, approved January 20, 1897, may be allowed in term time or in vacation by the circuit justice assigned to this circuit, by either of the circuit judges, or by any district judge who presided on the trial, and the proper security be taken, and the citation be signed by him, and he may also grant a supersedeas and stay of execution or proceedings pending the determination of such writ of error.

2. Where such writ of error is allowed in any criminal case as aforesaid, the circuit court or district court before which the accused was tried, or the trial judge or the circuit justice assigned to the circuit, or either of the circuit judges, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be as near as may be in the form prescribed in the appendix to these rules.

[Promulgated June 11, 1897; 80 Fed.]

APPENDIX (TO RULE 37).

(Form of Appearance Bond on Writ of Error in Criminal Cases.)

Know all men by these presents:

That we, ————, as principal and as sureties, are held and firmly bound unto the United States of America in the full and just sum of ——— dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ——— day of ————, in the year of our Lord one thousand eight hundred and ninety —.

Whereas, lately at the ——— term, A. D. 189—, of the ———— court of the United States for the ——— district of ————, in a suit depending in said court between the United States of America, plaintiff, and ————, defendant, a judgment and sentence was rendered against the said ————, and the said ———— has obtained a writ of error from the United States circuit court of appeals for the Fifth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States circuit court of appeals for the Fifth circuit, at the city of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said ———— shall appear in the United States circuit court of appeals for the Fifth circuit on the first day of the next term thereof, to be held at the city of ————, on the first Monday in ————, A. D. 189—, and from day to day thereafter during said term, and from term to term, and

from time to time, until finally discharged therefrom, and shall abide by and obey all orders made by the said United States circuit court of appeals for the Fifth circuit, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said ———— court against him shall be affirmed by the United States circuit court of appeals for the Fifth circuit, then the above obligation to be void, else to remain in full force, virtue and effect.

[As amended, 86 Fed. 4.]

The order of the supreme court, ante, pp. 1588-1589, with reference to fees and costs in the circuit courts of appeals, is controlling in this circuit.

SIXTH CIRCUIT.

The rules of the sixth circuit which differ from those originally drawn up for the several circuit courts of appeals, are here given in full. The original rules will be found, ante, pp. 1549-1588.

Original Rules 1 and 2, ante, page 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS AND HEARINGS OF CASES.

One term of this court shall be held annually on the Tuesday after the first Monday of October, and adjourned sessions on the Tuesday after the first Monday of each other month in the year except August and September.

All sessions of the court shall be held at Cincinnati unless otherwise especially ordered by the court.

At the October, February and May sessions of the court, hereafter referred to as calendar sessions, there shall be a regular and peremptory call of a calendar containing all the cases upon the docket which under the rules should then be ready for hearing.

At other than calendar sessions, except the June and July session, the court will hear any case upon the docket in which the record has been printed and briefs for both parties filed, provided that there has been also filed in the clerk's office on the Monday preceding the first day of such session the written consent of counsel for both parties that such hearing may be had.

At other than calendar sessions the court, on motion, will also hear appeals from interlocutory orders granting preliminary injunctions, appeals or writs of error in any cause given priority by the statutes of the United States, and appeals from orders in habeas corpus proceedings, where the petitioner is in jail, provided that the record has been printed and the brief of the moving party and due notice of the motion have been filed with opposing counsel at least six days before the opening day of the session.

Appeals in habeas corpus cases when the petitioner is in jail will be heard at any time when the court is in session after the record has been printed and the brief for the petitioner has been filed with opposing counsel six days before the day set for hearing of the motion.

At other than calendar sessions, the court will also hear all motions, and miscellaneous business, and will announce opinions.

For good cause shown, on motion of either party, the court may advance any cause upon the docket to be heard at any session, whether calendar or otherwise, even though the time permitted under the rules for the filing of briefs may not have expired at the day set for hearing. Such motions for the advancement of causes will only be heard by the court upon five days' previous notice to opposing counsel.

[As amended July, 1898; 87 Fed.]

Original Rules 4 and 5, ante, pp. 1550-1551, were adopted and are still in force in this circuit.

RULE 6. MARSHAL, CRIER, AND OFFICERS.

1. The crier and bailiffs of the court shall, before they enter on their duties, take an oath in the form prescribed by section 782 of the Revised Statutes.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

[As amended Oct. 22, 1894.]

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors permitted to practice in the supreme court of the United States or

in any circuit court of the United States shall become attorneys and counselors in this court on taking an oath or affirmation as prescribed by rule 2 of the supreme court of the United States and upon subscribing the roll.

The fee for such admission shall be $10, in accordance with the table of fees as prepared by the supreme court of the United States.

Every person taking the oath and paying such fee shall be entitled to a certificate of his admission signed by the clerk.

[As amended Oct. 22, 1894.]

Original Rules 8, 9, 10, 11, 12, 13, 14 and 15, ante, pp. 1552-1569, were adopted and are still in force in the sixth circuit.

RULE 16. DOCKETING CASES.

1. It shall be the duty of the plaintiff in error, or appellant, to docket the case, and file the record thereof with the clerk of this court, by or before the return-day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed, upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was

rendered, stating the case, and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

And at the time of filing the record, the plaintiff in error or appellant shall deposit with the clerk the sum of thirty dollars as security for costs, except in cases in which the proper showing is made and an order of this court is entered thereon allowing the cause to proceed in forma pauperis.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and, if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

[As originally adopted.]

RULE 17. DOCKET.

The clerk shall enter upon a docket all cases brought to and pending in the court in their

proper chronological order, and such dockets shall be called at every calendar session, as provided in rule 3. And if a case is called for hearing at two calendar sessions successively, and upon the call at the second session neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

[As amended Oct. 22, 1894.]

Original Rules 18, 19, 20, and 21, ante, pp. 1571-1576, were adopted and are still in force in the sixth circuit.

RULE 22. PARTIES NOT READY.

Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial the defendant may have the plaintiff called, and the writ of error or appeal dismissed.

2. Where the defendant fails to appear when an argument case is called for trial, the court may proceed to hear argument on the part of the plaintiff, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

4. All causes shall stand for hearing when the time allowed for printing the records and the briefs of both parties shall have expired; provided,

however, that causes may be heard when the records and briefs therein are printed, though the time allowed for printing records and briefs may not have expired.

[As amended June 22, 1893.]

RULE 23. PRINTING RECORDS.

1. The clerk shall supervise the printing of all records, and upon the docketing of a case shall forthwith cause an estimate to be made of the cost of printing the record and his fee for preparing it for the printer and for supervising the printing thereof, and shall at once notify the attorney for the plaintiff in error, or the appellant, of the amount of such estimate, which shall be paid to the clerk within ten days after such notice. If not so paid, the writ of error, or appeal, may be dismissed upon the motion of the opposite party or by the court of its own motion.

2. After the payment to him of such estimate the clerk shall cause at least twenty-five (25) copies of the record to be printed forthwith, shall file the same and shall furnish to each of the respective parties three (3) copies thereof, and take a receipt therefor.

3. Parties may agree by written stipulation filed with or prior to the filing of the record that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record.

The plaintiff in error or appellant may, within ten days after the case shall be docketed in this court, file with the clerk a statement of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within fifteen days after service of such statement, may designate in writing, filed with the clerk, additional parts of the record which he thinks material, and if he shall not do so he shall be held to have consented to the hearing of the parts designated by the plaintiff in error or appellant.

If parts of the record shall be so designated by one or both parties, the clerk shall print those parts only, and the court will consider nothing but those parts of the record.

If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed or such other order made as the circumstances may appear to the court to require.

If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made which the court shall think proper.

If good cause be shown the time within which the statement of the parts of the record is to be filed with the clerk by either party, as above limited, may be enlarged by the court in session or

by either circuit judge if eligible to sit in the cause.

4. If the cost of printing and supervision shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying the same. If the cost is greater than the estimate the amount of such excess shall be paid to the clerk before he shall file the printed record or deliver any copies thereof.

5. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing and supervision shall be taxed against the party against whom the costs are given, and shall be inserted in the mandate or other proper process.

6. In any case where the record shall have been printed in the court below, either circuit judge may, on the written application of the plaintiff in error or appellant, order that such printed record be used in this court. In such case the judge shall require as a condition of making the order, a certificate of the clerk of this court that the record is in accordance with the printing rules and is properly indexed, in which case the supervision fee, provided in paragraph 8 below, shall be charged and collected by the clerk.

7. The clerk of this court shall receive proposals for printing, which shall be submitted to the senior circuit judge, who may in his discretion award such printing to the lowest and best bidder, and all such printing shall be done by the person to whom the same is so awarded. And when a

case shall be heard upon a record printed in the court below the cost for printing shall be taxed on the basis of such bid for printing, except when the parties otherwise agree.

[As amended Feb. 10, 1896, and modified by order of supreme court with reference to fees, ante, p. 640.]

RULE 24. BRIEFS.

1. The counsel for the plaintiff in error shall file with the clerk of this court within twenty-five days after the filing of the printed copies of the record, as required in rule 23 as amended, twenty copies of a printed brief, one of which shall on application be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain in order here stated:

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief, within forty days after the filing of the printed record, as required by rule

23. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no statement of the case shall be required, unless that presented by the plaintiff in error or appellant is controverted.

4. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default he will not be heard, except on consent of his adversary, and by request of the court.

5. When no counsel appears for one of the parties and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As amended Feb. 25, 1895.]

Original Rule 25, ante, p. 1581, was adopted and is still in force in the sixth circuit.

RULE 26. FORM OF PRINTED RECORDS, ARGUMENTS AND BRIEFS.

1. All records shall be of a uniform size, printed in small pica type, 24 pica ems to a line, 48 lines to a page, solid, with an index, and a suitable cover containing the title of the court and cause, the court from which the case is brought to this court, and the number of the case; size of pages to be $9\frac{1}{4}$x$6\frac{1}{2}$ inches, except that in patent cases the size of the pages shall be $10\frac{3}{4}$x$7\frac{5}{8}$ inches; that is to say, large enough to bind in copies of patent-office drawings and specifications without folding.

2. All arguments and briefs of attorneys shall be printed, and conform as near as practicable to the size of the printed record.

[As amended Jan. 2, 1894.]

Original Rule 27, ante, p. 1581, is still in force in the sixth circuit.

RULE 28. OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The opinions of the court shall be printed under the supervision of the clerk by the printer to whom the court printing has been awarded in accordance with paragraph 7, rule 23.

3. Opinions printed under the supervision of the clerk need not be copied into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

4. This clause has been superseded by the order of the supreme court, ante, p. 640.

5. The cost of printing the opinions shall be defrayed out of the amount received for the same, and any deficit shall be paid out of such fees collected by the clerk as are not properly taxable as costs in any case pending in the court.

[As amended Oct. 22, 1894.]

RULE 29. REHEARING.

A petition for rehearing after judgment can be presented only within thirty days after such judgment, and not later, unless by special leave granted during such thirty days; and must be printed, and briefly and succinctly state its grounds, and be supported by certificate of counsel; and will not be granted or permitted to be argued unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

[As amended June 22, 1893.]

Original Rules 30 and 31, ante, pp. 1583-1585, are still in force in the sixth circuit.

RULE 32. MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a procedendo shall be issued, on the order of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Such mandate shall not issue until time has elapsed for filing a petition to rehear as defined by rule 29, and no mandate or other process of procedendo shall issue when a petition to rehear is pending unless specially ordered.

Every mandate shall be accompanied by a copy of the opinion filed in the cause in which it is issued, and the charge for the same shall be taxed in the costs of the case.

[As amended Oct. 2, 1894.]

Original Rules 33 and 34, ante, pp. 1586-1587, were adopted and are still in force in the sixth circuit.

RULE 35. TESTIMONY IN ADMIRALTY CASES AFTER APPEAL.

In admiralty appeals no testimony shall be taken except under a commission issued from this court to a clerk of a United States court or a United States commissioner, by direction of the court, the circuit justice, or either circuit judge, qualified to sit on appeal in said case, after cause shown to such court, justice, or judge that such evidence is material and necessary, and could not by due diligence have been produced at the original hearing. Such testimony shall be taken only on interrogatories settled by such court, justice or judge, upon at least ten days' previous notice to the opposing party or his attorney (accompanied by a copy of the proposed interrogatories), and upon cross-interrogatories to be settled at the same time after five days' previous notice of the same, with copy thereof, to be served upon counsel offering testimony.

[Adopted June 22, 1893.]

RULE 36. DISPOSITION OF FEES NOT COSTS IN CASES.

All fees collected by the clerk which are not properly taxable as costs in any case pending in the court and which are not by law required to be deposited by him in the treasury of the United States, after the payment of any deficit arising

from the printing of opinions, shall constitute a fund to be expended in the purchase of law books for the library of the court by the clerk, under the direction of the court. And it shall be the duty of the clerk to render to the court for its examination and approval a quarterly account of such fees received and disbursed by him.

[Adopted Oct. 2, 1894.]

RULE 37. CALL AND ORDER OF THE DOCKET.

1. The court on the first day of each calendar session will begin calling the cases for argument in the order in which they stand on the docket and proceed from day to day during the session in the same way. If the parties or either of them shall be ready when the case is called, the same will be heard, and if neither party shall be ready to proceed with the argument, the case will be continued to the next calendar session.

2. Each day's calendar shall consist of six cases next in order after the case last submitted on the previous day, but the calendar will not include any case continued or passed by the court or stipulation of counsel before the adjournment of court on the previous day. The calendar for each day shall be exhibited in the clerk's office at the adjournment of court on the previous day.

Counsel choosing to rely on the judgment of the clerk as to the probable time of the hearing of any case, otherwise than as shown in the day's calendar above provided for, must do so at their own risk.

3. Two or more cases involving the same question may by leave of the court be heard together, but they must be argued as one case.

[Adopted Oct. 22, 1894.]

RULE 38. APPEALS AND WRITS OF ERROR. ALLOWANCE.

1. An appeal or writ of error from a circuit court or a district court to this court in the cases provided for in sections 6 and 7 of the act entitled, "An act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and acts to amend said act approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice or by either circuit judge within the circuit or by any district judge within his district and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and a stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error to this court is allowed in the case of a conviction of an infamous crime or in any other criminal case in which it will lie, the circuit court or district court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

[Adopted March 21, 1897.]

The order of the supreme court with reference to fees in the circuit courts of appeals is in force in the sixth circuit.

SEVENTH CIRCUIT.

The rules of the seventh circuit which differ from those originally drawn up for the several circuit courts of appeals, are here given in full. The original rules will be found, ante, pp. 1549-1588.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS.

A term of this court shall be held annually, at the city of Chicago on the first Tuesday in October, and continue until the first Tuesday in October of the succeeding year. Every term shall be adjourned to such times and places as the court may from time to time designate. Unless otherwise specially ordered, the court will hold at Chicago three sessions for the hearing of causes during each term, beginning on the first Tuesday in October, January and May, respectively.

[With amendments to Feb. 10, 1899.]

Original Rule 4, ante, p. 1550, was adopted and is still in force in this circuit.

RULE 5. CLERK.

1. The clerk's office shall be kept at Chicago.

2. The clerk shall not practice either as attorney or counselor, in this court or in any other court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by section 794 of the Revised Statutes, and shall give bond in a sum to be fixed and with sureties to be approved by the court, faithfully to discharge

the duties of his office and seasonably to record the decrees, judgments and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safekeeping as the court shall direct.

4. He shall not permit any original record or paper to be taken from the court room or from the office without an order from the court.

5. All fees collected by the clerk which are not properly taxable as costs in any case and which are not by law required to be by him deposited in the treasury of the United States, shall constitute a fund to be expended by the clerk under the direction of the court in the purchase of law books for the library of the court.

6. The clerk shall keep an accurate and itemized account of all moneys received by him officially, including costs and fees in cases in the court and fees and moneys collected on any account whatever, and shall deposit the same as received daily to his credit as clerk and separately from all individual accounts in a national bank designated by the senior judge; and at the end of each month and whenever required by the court or senior judge, shall submit to the senior judge a detailed report showing by items all moneys received and all paid out during the month and the total balances on hand from each and all sources of receipt. Each report shall be accompanied by a statement over the signature of the cashier or other officer of the bank in which the deposit is kept of the amount in the bank to the credit of

the clerk at the close of the last day included in the report.

[As amended to Feb. 10, 1899.]

Original Rule 6, ante, p. 1551, is still in force in this circuit.

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the supreme court of the United States, or in any circuit court of the United States, or in the supreme court of a state in this circuit, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the supreme court of the United States, and on subscribing the roll.

[As amended to February 10, 1899.]

Original Rules 8 and 9, ante, p. 1552, were adopted and are still in force in this circuit.

RULE 10. BILL OF EXCEPTIONS AND TRANSCRIPT.

1. The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, and upon any general exception to the whole of said charge. But the party excepting shall be required to state distinctly the several matters of law in the charge to which he excepts, and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. A bill of exceptions shall contain the evi-

dence only such a statement as is necessary for the presentation and decision of questions saved for review, and unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all the evidence shall not be allowed.

3. No document shall be copied more than once in a bill of exceptions or in a transcript of the record of the case, but instead there shall be inserted a reference to the one copy set out. A motion for a new trial and orders and entries relating thereto shall not be set out in the transcript unless required by written precipe, of which a copy shall also be set out.

4. The cost of unnecessary matter in the bill of exceptions or transcript or in the printed record shall not be recovered of the appellee or defendant in error, and in its discretion the court will in case of dispute appoint a referee to determine and report what was unnecessary therein, and will tax the cost of the reference as shall seem just.

[As amended to February 10, 1899.]

RULE 11. ASSIGNMENT OF ERRORS.

The plaintiff in error, or appellant, shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors which shall specify separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the ad-

mission or to the rejection of evidence, the specification of the error shall quote the full substance of the evidence admitted or rejected. When the evidence rejected is oral testimony a written statement of the substance of what the witness was expected to testify shall be filed and brought to the attention of the court before the retirement of the jury. When the error alleged is to the charge of the court, each specification of error shall be set out the part referred to totidem verbis, whether it be in instructions given, or in instructions refused, and shall state distinctly the grounds of objection to an instruction given. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded, but the court at its option may notice a plain error not assigned. (See Rule 24, post.)

[As amended to February 10, 1899.]

Original Rules 12 and 13, ante, pp. 1563-1565, are still in force in this circuit.

RULE 14. WRITS OF ERROR, APPEALS, AND RETURN, AND RECORD.

1. The clerk of the court, to which any writ of error may be directed, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case necessary to the hearing in this court, under his hand and seal of the court.

The clerk may require of the appellant or plaintiff in error a written precipe stating in detail what the transcript shall contain, and when a precipe is filed shall insert a copy thereof in the transcript.

2. In all cases brought to this court, by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safekeeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations must be made returnable not exceeding thirty days from the date on which the appeal is allowed, or the writ of error issued, whether the return day fall in vacation or in term time, and be served before the return day. If a party be nonresident, the citation and any other writ or notice necessary

in the prosecution of the appeal or writ of error may be served upon such party's counsel or attorney of record, who for such purpose may not be discharged unless another resident be designated of record in the case upon whom service may be made.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty rule No. 52 of the supreme court.

[As amended to February 10, 1899.]

Original Rules 15 and 16, ante, pp. 1569-1570, were adopted and are still in force in this circuit.

RULE 17. DOCKET.

The clerk shall prepare calendars of causes for the regular terms of this court, to be held on the first Tuesday of October in each year, and for each adjourned session, placing thereon in proper chronological order only causes in which the record shall have been printed fully thirty days before such term or session, and those causes in which, the record having been printed, briefs upon both sides have been filed seven days before the beginning of such term or session.

Original Rules 18, 19, 20, 21, and 22, ante, pp. 1571-1576, were adopted and are still in force in this circuit.

RULE 23. PRINTING THE RECORD.

1. In all cases the plaintiff in error or appellant on docketing a case and filing the record, shall enter into an undertaking to the clerk, with sure-

ty to be approved by the clerk, for the payment of all costs which shall be incurred in the cause, shall deposit with the clerk twenty-five dollars to be applied to the payment of costs and fees, and from time to time when necessary shall, on demand of the clerk, make further deposits for that use.

2. The clerk shall, upon the docketing of a case, forthwith cause an estimate to be made of the cost of printing the record and of his fees for preparing it for the printer and for supervising the printing thereof, and shall at once notify the attorney for the plaintiff in error, or appellant, of the amount of such estimate, which shall be paid to the clerk within ten days after such notice. If not so paid, the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

3. The clerk shall cause the record in all cases to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish to each of the respective parties at least three copies of the printed record, taking a receipt therefor, and the parties may, by written stipulation filed with or prior to the filing of the record, agree that only parts of the record shall be printed, and the case may be heard only on the parts so printed, unless the court shall direct the printing of other parts.

4. The clerk shall cause at least 25 copies of the record to be printed, and may print a larger number on the request of either party on payment of the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing, and see that the printed recorded is indexed properly and in a manner to indicate briefly the character of each document and exhibit referred to. He shall distribute the printed copies to the justices of the court from time to time, as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the clerk's estimate, the amount of such excess shall be paid to the clerk before he shall deliver or file the printed record or any copies thereof.

6. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of the printing of the record and of the clerk's fee for supervising the same shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

7. Upon the clerk's producing satisfactory evidence by affidavit or the acknowledgment of the parties or their sureties or attorneys, of having served a copy of the bill of fees due from them, respectively, in this court on such parties, their sureties or attorneys, an attachment shall issue against such parties or their sureties, respectively, to compel the payment of said fees.

8. The clerk shall adopt a uniform size for the printing of all records, and the same shall be printed in small pica type, on clear white paper, with

a margin of not less than an inch and a half, and show by a note or memorandum on the margin the time when each pleading or document was filed, and at the top of the pages shall insert running titles of their contents.

9. The briefs of attorneys shall also be printed, and conform as nearly as practicable to the size of the printed record.

10. The clerk shall, on or before the conclusion of each case, collect and file, or otherwise preserve together, one copy of the printed record, and of each brief, printed motion, and argument submitted therein.

11. In any case where the record shall have been printed in the court below, the presiding judge may, on the application of the plaintiff in error or appellant, order that such printed record be used in place of the printing hereinbefore provided for. But the clerk shall prepare and cause to be printed and attached to the printed record an index thereof, and shall be paid the same fees for the indexing and supervision thereof as if printed under his supervision.

12. The clerk of this court shall obtain sealed proposals for the printing hereinbefore provided for, which proposals shall be submitted to the senior circuit judge of the court, who shall award such printing to the lowest and best bidder, and all such printing shall be done by the person to whom the same is so awarded, except in emergencies when printing may be done by another at the same or less price. And, when a case shall be

heard upon the record printed below, the costs for printing shall be taxed on the basis of actual cost, not exceeding the rate of the accepted bid.

13. The fees of the clerk of this court, as prescribed by order of the supreme court made February 28, 1898, are as follows: (See ante, p. 640.)

[As amended to February 10, 1899.]

RULE 24. BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, within twenty days after the date of the delivery by the clerk of the printed record, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain in order here stated, and under the respective titles, "Statement of Case," "Errors Relied Upon," and "Brief of Argument."

(1) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged, and, in cases brought up by appeals, the specifications shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specifications shall quote the full

substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to totidem verbis, whether it be in instructions given or in one refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report, and the action of the court upon it. Following each specification there shall be a reference by page to the portion of the printed record on which the question arises.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or the appellee shall file with the clerk twenty printed copies of his brief within twenty days after the filing of the brief of the plaintiff in error or appellant. His brief shall conform to the requirements of this rule except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted. Either party may, at or before the argument of a cause, file a supplemental brief, strictly confined to matter in reply to the brief of the opposite party.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes,

counsel will not be heard, except at the request of the court; and errors not specified according to this rule and rule 11, ante, will be disregarded; but the court at its option may notice a plain error involving the merits of the case though not assigned or specified, and though the question be not saved according to the strict rules of practice, if it be apparent of record that the point was contested and not waived in the court below.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and, when a defendant in error or an appellee is in default, he will not be heard except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As amended to February 10, 1899.]

RULE 25. ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But, when there are cross-appeals, they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

4. Reading at length from briefs or reported cases shall not be indulged.

[As amended May 24, 1893.]

RULE 26. OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records, but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and, when so bound, they shall be deemed to have been recorded within the meaning of this rule.

[As amended October 8, 1891.]

RULE 27. REHEARING.

A petition for rehearing must be filed within thirty days after entry of judgment or decree or after filing of the opinion, shall be in print, and

be served forthwith by copy upon the opposing party, who, within twenty days from such service, may file a printed answer; and the petition shall be determined without oral arguments, unless otherwise ordered. If a petition be not filed within the time allowed, and upon the overruling of a petition, the clerk shall, without special order, issue the mandate of the court to the court below. Twenty copies of such petition or answer shall be filed with the clerk of this court.

[As amended to Feb. 10, 1899.]

RULE 28. INTEREST.

1. When a judgment for the payment of money is affirmed by this court, the interest shall be calculated and levied from the date of the judgment below until the same is paid, and at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded on the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases of equity, unless otherwise ordered by this court.

4. In cases of admiralty damages and interest may be allowed, if specially directed by the court.

[As amended to Feb. 10, 1899.]

RULE 29. COSTS.

1. When any suit shall be dismissed in this court, except for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In every case of reversal of a judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in that court as costs in the case.

4. No costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the supreme court, or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the supreme court.

[As amended to Feb. 10, 1899.]

RULE 30. MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a

procedendo shall be issued on the order or by rule of this court to the court below for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

[As amended to Feb. 10, 1899.]

RULE 31. CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in the custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

RULE 32. MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, and in any case pending in this court on writ of error or appeal, shall be placed in the cus-

tody of the marshal of this court at least ten days before the case is heard or submitted; and shall be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

[As amended to Feb. 10, 1899.]

The order prepared by the supreme court in reference to fees and costs in the circuit courts of appeals, ante, pp. 1588-1589, is controlling in this circuit.

EIGHTH CIRCUIT.

The rules of the eighth circuit which differ from those originally drawn up for the several circuit courts of appeals, are here given in full. The original rules will be found, ante, pp. 1549-1588.

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS.

One term of this court shall be held annually at the city of St. Louis, Missouri, on the first Monday in December, and one term of this court shall be held annually at the city of St. Paul, Minnesota, on the first Monday of May; and such terms of said court may be adjourned to such times as the court may, from time to time, designate.

[As amended June 20, 1892.]

Original Rules 4 and 5, ante, p. 1550, were adopted and are still in force in this circuit.

RULE 6. MARSHAL, CRIER AND OTHER OFFICERS.

The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may from time to time order.

[As amended.]

RULE 7. ATTORNEYS AND COUNSELORS.

1. All attorneys and counselors admitted to practice in the supreme court of the United States, or in any circuit court of the United States, or in the supreme court of any State in this circuit may, upon motion of some member of the bar of this court, be admitted as attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the Supreme Court of the United States, and on subscribing the roll; but no fee shall be charged therefor.

2. And any attorney and counselor admitted to practice in the courts of highest original jurisdiction in the States and Territories of this circuit, or in the supreme courts of such States and Territories, or in the district or circuit courts of the United States for this circuit. will be admitted to practice and enrolled as an attorney and counselor of this court, upon furnishing to the clerk of this court a certificate of a clerk or judge of any one of the courts named that the applicant is an attorney of any one of the said courts: and upon subscribing and forwarding to the clerk the following

oath: "I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of the circuit court of appeals for the Eighth circuit, uprightly and according to law; and that I will support the constitution of the United States. So help me God."

[As amended June 27, 1892.]

Original Rules 8, 9, 10, 11, 12, and 13, ante, pp. 1552-1565, were adopted and are still in force in this circuit.

RULE 14. WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case (and in cases at law a complete copy of the charge of the court to the jury).

3. No case shall be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit

or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding sixty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in general admiralty rule No. 52 of the Supreme Court.

[As amended February 10, 1896.]

Original Rules 15, 16, 17, 18, 19, 20, 21, and 22, ante, pp. 1569-1577, were adopted and are still in force in this circuit.

RULE 23. PRINTING RECORDS.

1. The plaintiff in error or appellant may, within twenty days after the allowance of any writ of error or appeal, serve on the adverse party a copy of a statement of the parts of the record which he thinks necessary for the consideration of the errors assigned, and file the same, with proof of service thereof, with the clerk of this court; the adverse party within twenty days thereafter may designate in writing and file with the

clerk additional parts of the record which he thinks material, and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record in determining the questions raised by the errors assigned. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed such order as to costs may be made as the court shall think proper.

2. On the filing of the transcript in every case the clerk shall cause the same, or the parts thereof designated under this rule, to be printed, and shall furnish three copies of the record so printed to each party at least thirty days before the argument.

3. The clerk shall be entitled to demand of the appellant or plaintiff in error the cost of printing the record before ordering the same to be done.

4. If the record shall not have been printed when the case is reached for argument, for failure of the party to advance the cost of printing, the case may be dismissed.

5. In case of reversal, affirmance, or dismissal with costs, the amount paid for printing the rec-

ord shall be taxed against the party against whom costs are given.

[As amended June 20, 1892.]

Printed record.—Where the parts of the record designated as necessary to a consideration of the errors assigned and printed by the clerk under the above rule, do not contain all the evidence nor a bill of exceptions, the court cannot review rulings of the trial court on motions challenging the sufficiency of the evidence (Lincoln Sav. Bank & Safe Dep. Co. v. Allen, 49 U. S. App. 498; 82 Fed. Rep. 148).

RULE 24. BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of this court, at least twenty days before the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain in order here stated:

(1) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be argued; and, in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error

alleged is to the charge of the court, the specification shall set out the part referred to totidem verbis, whether it be in instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be

dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As originally adopted.]

Brief.—The counsel must cite in his brief the pages of the record which present the errors or the errors will not be noticed (Hoge v. Magnes, 56 U. S. App. 500; 85 Fed. Rep. 355).

Original Rules 25, 26, 27, 28, 29, and 30, ante, p. 1581-1584, were adopted and are still in force in the eighth circuit.

RULE 31. COSTS.

1. In all cases where any suit shall be dismissed in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In all cases of reversal of any judgment or decree in this court, the costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript

of the record from the court below shall be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the supreme court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the supreme court.

[As originally adopted.]

Original Rules 32, 33, and 34, ante, pp. 1586-1588, were adopted and are still in force in this circuit. The order made by the supreme court in reference to fees and costs in this circuit, ante, pp. 1588-1589, is controlling in this circuit.

RULE 35. WRITS OF ERROR IN CRIMINAL CASES.

1. Writs of error to review criminal cases tried in any district or circuit court of the United States within this circuit, which may be reviewed under the provisions of the act of March 3, 1891, creating this court, and the act of Congress amendatory thereof, approved January 20, 1897—may be allowed in term time or in vacation by the circuit

justice assigned to this circuit, or by either of the circuit judges within the circuit, or by any district judge within his district, and the proper security be taken, and the citation signed by him, and he may also grant a supersedeas and stay of execution or proceedings, pending the determination of such writ of error.

2. Where such writ of error is allowed in the criminal cases aforesaid, the circuit court or district court before which the accused was tried, or the district judge of the district wherein he was tried, within the district, or the circuit justice assigned to the circuit, or either of the circuit judges within the circuit, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be, as near as may be, in the form prescribed in the appendix to these rules.

[As adopted February 23, 1897.]

APPENDIX (TO RULE 35).

(Form of Appearance Bond on Writ of Error in Criminal Cases.)

Know all men by these presents, that we, ————, as principal, and ————, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ———— dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this ———— day of ————, in the year of our Lord, one thousand eight hundred and ninety———.

Whereas, lately at the ———— term, A. D. 189—, of the ———— court of the United States for the ———— district of ————, in suit depending in said court between the United States of America, plaintiff, and ————, defendant, a judgment and sentence was rendered against the said ————, and the said ———— has obtained a writ of error from the United States circuit court of appeals for the eighth circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said ———— shall appear in the United States circuit court of appeals for the eighth circuit on the first day of the next term thereof, to be held at the city of ————, on the first Monday in ————, A. D. 189—, and from day to day thereafter during said term, and from term to term, and from time to time, until finally discharged therefrom, and shall abide by and obey all orders made by the said United States circuit court of appeals for the eighth circuit, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said ———— court against him shall be affirmed by the United States circuit court of appeals for the eighth circuit, then the above obliga-

tion to be void, else to remain in full force, virtue and effect.

———————— [Seal]
———————— [Seal]
———————— [Seal]

Approved:

————————,
Judge of the ————.

[Adopted February 23, 1897.]

ORDER.

It is ordered that the clerk of this court issue a mandate or other proper process to the lower court in all cases finally disposed of in this court, sixty days after the final disposition thereof, except in cases dismissed under the provisions of rule twenty and section one of rule sixteen of this court, and except in cases where it shall be otherwise expressly ordered.

[Entered February 20, 1893.]

The order of the supreme court, ante, p. 1588, with reference to fees in the circuit courts of appeals, is controlling in this circuit.

NINTH CIRCUIT.

The rules of the ninth circuit which differ from those originally drawn up for the several circuit courts of appeals are here given in full. The original rules will be found, ante, pp. 1549-1588,

Original Rules 1 and 2, ante, p. 1549, were adopted and are still in force in this circuit.

RULE 3. TERMS.

One term of this court shall be held annually at the city of San Francisco on the first Monday of

October, and shall be adjourned to such times and places as the court may from time to time designate.

[As adopted.]

RULE 4. QUORUM.

1. If, at any term or session, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process, depending in, or returned to the court, preparatory to hearing, trial, or decision thereof.

[As amended.]

RULE 5. CLERK.

1. The clerk's office shall be kept at San Francisco, California.

2. The clerk shall not practice as attorney or counselor in this court or in any other court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by section 794 of the Revised Statutes, and shall

give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe-keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the courtroom or from the office, without an order from the court, except as provided in Rule 23.

[As amended.]

RULE 6. MARSHAL, CRIER, AND OTHER OFFICERS.

1. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

[As amended.]

RULE 7. ATTORNEYS AND COUNSELORS.

All attorneys admitted to practice in the supreme court of the United States, or in any circuit court of the ninth circuit, shall be deemed attorneys of the circuit court of appeals of the ninth circuit; but such attorneys, on or before their first appearance in open court, shall take an oath or affirmation, in the form prescribed by rule 2 of the supreme court of the United States, and subscribe the roll of attorneys. All other persons

who have been admitted to practice in the highest court of any State or territory, upon presenting satisfactory evidence of good moral character and fair professional standing, may be admitted to practice in said court, upon taking the oath so prescribed, and subscribing the roll of attorneys.

[As originally adopted.]

Original Rules 8, 9, 10, 11, 12, and 13, ante, pp. 1552-1565, were adopted and are still in force in this circuit.

RULE 14. WRITS OF ERROR, APPEALS, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, opinion or opinions of the court, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which said judgment or decree was rendered shall annex to and transmit with the record the original writ of error and citation, or citation issued in the cause, and a certificate under seal stating the cost of the record and by whom paid.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in

the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the supreme court.

[As amended.]

Original Rules 15 and 16, ante, pp. 1569-1570, were adopted and are still in force in this circuit.

RULE 17. DOCKET.

The clerk shall, upon payment to him by the appellant or plaintiff in error of a deposit of twenty-five dollars in each case, enter upon a docket all cases brought to and pending in the court in their proper chronological order.

[As amended.]

Original Rules 18, 19, and 20, ante, pp. 1571-1576, were adopted and are still in force in this circuit.

RULE 21. MOTIONS.

1. All motions to the court shall be reduced to writing, shall contain a brief statement of the facts, and objects of the motion, and shall be served upon opposing counsel at least five days before the day noticed for the hearing.

2. One-half hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice, as above, has been given, to the adverse party, or the counsel or the attorney of such party.

[As amended.]

RULE 22. PARTIES NOT READY.

1. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called, and the writ of error or appeal dismissed.

2. When the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the case.

3. Where a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff in error or appellant.

[As amended.]

RULE 23. PRINTING RECORDS.

1. Hereafter all records shall be printed under the supervision of the clerk, and, upon the docketing of a cause, he shall cause an estimate to be made of the expense of printing the record, and his fee for preparing it for the printer and supervising the printing, and shall notify the party docketing the case of the amount of the estimate. If the amount so estimated is not promptly paid over to the clerk, and for want of such payment the record shall not have been printed when a case is reached for argument, the case shall be dismissed.

2. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

3. In cases of appellate jurisdiction, the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers sent up under Rule 14, section 4, as are necessary to be printed; and the whole of the record in cases of original jurisdiction.

4. The clerk shall supervise the printing and see that the printed copy is properly indexed. He shall distribute the printed copies to the judges and the reporter, and one or more printed copies to the counsel of the respective parties.

5. If the expense of printing and supervision shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying the same. If the expense is greater than

the estimate, the amount of such excess shall be paid to the clerk before he shall file the printed record or deliver copies to the parties or their counsel.

6. In case of reversal, affirmance or dismissal, with costs, the amount paid for printing the record, and of the clerk's fee, shall be taxed against the party against whom costs are given.

7. The plaintiff in error or appellant may upon filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ten days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, or if such parts be distinctly designated by stipulation of counsel for the respective parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the

record to be printed, such order as to costs may be made as the court shall think proper.

All statements and stipulations filed hereunder shall distinctly and accurately refer to the pages of the original certified record, as well as the documents to be printed or omitted.

8. At the time of filing the record and docketing the cause, counsel for the plaintiff in error or appellant in patent cases may furnish the clerk with copies of patent office drawings and specifications to be used as inserts, and the same, if in proper form and convenient size, shall be used in printing the record, without cost to the parties.

9. The fee of the clerk for preparing the record for the printer, indexing the same, supervising the printing, and distributing the copies, for each printed page of the record and index, twenty-five cents.

[As amended.]

RULE 24. BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of this court, twenty copies of a printed brief, and serve upon counsel for the defendant in error or the appellee one copy thereof, at least ten days before the case is called for argument.

2. This brief shall contain, in order here stated:

(1) A concise abstract or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the court and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief and serve upon counsel for plaintiff in error or appellant one copy thereof, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except

that no specification of error shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and, when a defendant in error or an appellee is in default he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

[As amended.]

Briefs.—When the specification of error states only the subject of evidence and does not give its substance, and the brief contains no reference to the page of the record showing the ruling, the matter is not properly brought to the attention of the court (Migeon v. Mont. Cent. Ry. Co., 44 U. S. App. 724; 77 Fed. Rep. 249).

RULE 25. ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. One hour on each side will be allowed for the argument, and no more without special leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion; provided always that a fair opening of the case shall be made by the party having the opening and closing arguments.

[As amended.]

RULE 26. FORM OF PRINTED RECORDS, ARGUMENTS, BRIEFS, AND PETITIONS FOR REHEARING.

1. All records printed for the use of the court must be printed on unruled white writing paper, nine and one-quarter inches long and six and one-quarter inches wide. The printed page, exclusive of any marginial note, reference or running head, must be seven inches long and four inches wide, excepting in patent cases, where counsel furnish to the clerk at the time of docketing the cause patent office drawings and specifications for insertion. In such cases the margin of the record may

be sufficiently enlarged to accommodate such drawings and specifications. The record must be properly indexed. Pica, double-leaded, is the only mode of composition allowed.

2. All arguments, briefs, and petitions for rehearing, printed for the use of the court, must be printed on unruled white writing paper, nine and one-quarter inches long and six and one-quarter inches wide. The printed page, exclusive of any marginal note, reference or running head, must be seven inches long and four inches wide. Pica, double-leaded, is the only mode of composition allowed.

[As amended.]

Original Rules 27 and 28, ante, pp. 1581, 1582, were adopted and are still in force in this circuit.

RULE 29. REHEARING.

A petition for rehearing may be presented within fifteen days after judgment. It must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel that in his judgment it is well founded, and that it is not interposed for delay. Twenty printed copies must be filed with the clerk of this court.

[As amended.]

Original Rule 30, ante, p. 1583, was adopted and is still in force in this circuit.

RULE 31. COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be al-

lowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, including the cost of the transcript from the court below, unless otherwise ordered by the court.

4. Neither of the foregoing sections shall apply to cases where the United States are a party, but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the supreme court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the supreme court.

7. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of any bill of fees due by them, respectively, in this court, on such parties, or their sureties, an attachment shall issue against such parties or sureties respectively to compel payment of said fees.

[As amended.]

RULE 32. MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo*, at the request of counsel for the prevailing party and upon the payment of any costs due in the case, shall be issued, as of course from this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, if not stayed by the order of the court, shall be issued on the expiration of fifteen days from the date of such final determination unless within said time a petition for rehearing be filed, in which case the mandate shall not issue until after the determination of such petition.

[As amended.]

Original Rules 33 and 34, ante, pp. 1586-1588, were adopted and are still in force in this circuit. The order made by the supreme court with reference to fees and costs in the circuit courts of appeals, ante, pp. 1588-89, is controlling in this circuit.

RULE 35. ASSIGNMENT OF CAUSES FOR HEARING.

1. Thirty days prior to the opening of any calendar session of the court, the clerk is directed to assign causes for hearing at the rate of one case for each Monday, and two cases per day for the following four days of each week. Causes shall be grouped by States, and assignments made, so as to permit the hearing of causes from one State before

the causes from the next State in order shall be called; causes for the northern district of California shall be assigned for hearing last. Any causes entitled by law to preference in hearing shall be first assigned and take precedence over other causes from the same State.

2. A stipulation to continue a case to the foot of the calendar or in any way change the day assigned for such hearing, will not be recognized as binding upon the court, and no such change will be made except by order of the court for reason shown.

3. Ten days before each calendar session of the court the clerk shall prepare and cause to be printed a calendar of the causes assigned for the approaching session.

[As adopted.]

RULE 36. TERMS AND SESSIONS OF THE COURT.

1. One term of this court shall be held annually on the first Monday of October, and adjourned sessions on the first Monday of each month, in the year. All sessions shall be held at San Francisco unless otherwise especially ordered by the court.

2. The October, February and May sessions shall be known as calendar sessions, and shall be sessions for the trial of all causes that shall have been placed upon the calendar in pursuance of Rule 35.

3. A term of this court shall be held annually in the city of Seattle, in the State of Washington,

and in the city of Portland, in the State of Oregon. The Seattle term shall be held beginning upon the second Monday in September, and the term at Portland shall be held beginning upon the third Monday in September. All appeals and writs of error from the circuit and district courts for the district of Washington shall be heard at said annual term in the city of Seattle, unless it is stipulated by the parties thereto that they be heard at San Francisco. All appeals and writs of error from the circuit and district courts for the district of Oregon shall be heard at said annual term in the city of Portland, unless it is stipulated by the parties thereto that they be heard at San Francisco. Appeals and writs of error from the circuit and district courts for the districts of Idaho and Montana may, upon the stipulation of the parties thereto, be heard at the annual term to be held either at Seattle or Portland.

[As amended May 3, 1898, 85 Fed.]

RULE 37. CERTIFICATION ON PRINTED MATTER.

In all cases where printed matter is certified, the fees of the clerk of this court for certifying to such printed matter are hereby fixed at the rate of twenty cents per folio of one hundred words.

[As adopted.]

RULES OF PRACTICE

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

Rules promulgated February Term, 1822, 7 Wheat. v. Superseded by rules promulgated March, 1842, 17 Peters, lxi. Abrogated by Rules of Supreme Court, Edition of 1866.

RULE 1. PRELIMINARY REGULATIONS.

Court, when open.—The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

Orders in vacation.—The confirmation of a sale made under a decree in chancery is one as to the exercise and sufficiency of final process and may be determined in vacation, especially when each of the parties has brought the other before the chancellor on the subject by a rule onisi (Central Trust Co. v. Sheffield & Birmingham C. I. & Ry. Co., 60 Fed. Rep. 9).

RULE 2.

Clerk's office.—The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

RULE 3.

Orders, rules, etc.—Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule days at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the judge for the hearing.

Orders, etc., in term.—No formal notice is required of orders or motions made in term, in presence of counsel. (McLean v. Lafayette Bank, 3 McLean, 503; Fed. Cas. No. 8887.) Plaintiff is not precluded from raising the question of the sufficiency of a plea in bar by putting in issue the facts averred in the plea, and the issue being found against him (Green v. Bogue, 158 U. S. 478).

RULE 4.

Entry of motions, rules, and orders.—All motions, rules, orders, and other proceedings made and directed at chambers, or on rule days at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

Notice of motion.—Motions grantable of course do not require notice other than entry in the order book. (U. S. v. Parrott, 1 McAll. 447; Fed. Cas. No. 15999; Bronson v. Kensey, 3 McLean, 180; Fed. Cas. No. 1927; Halderman v. Halderman, Hemp. 407; Fed. Cas. No. 5908.) Motions which must be allowed by

the court or judge require in addition a special notice. (U. S. v. Parrott, 1 McAll. 447; Fed. Cas. No. 15999; Wilkins v. Jordan, 3 Wash. 226; Bennett v. Hoefner, 17 Blatchf. 341; Fed. Cas. No. 1320; Bronson v. Kensey, 3 McLean, 180; Fed. Cas. No. 1927; Gray v. Chicago etc. Co., 1 Woolw. 63; Fed. Cas. No. 5713.) Wherever the entry is not made in the order book, the party has not notice. (Newby v. Oregon etc. R. R. Co., 1 Sawy. 63; Fed. Cas. No. 10145.)

RULE 5.

Motion for process, etc., as of course.—All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso;* for filing exceptions, and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

Clerk's allowance, conditional.—The clerk's allowance of a motion may be suspended or altered by the judge, as justice may require. (Poultney v. Lafayette, 12 Peters, 472.)

RULE 6.

Motions and orders not grantable of course.—All motions for rules or orders and other proceed-

ings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused in his discretion.

Motions, etc., not grantable of course.—Motions and orders which require allowance by the judge or special notice to adverse party are not grantable of course. (U. S. v. Parrott, 1 McAll. 447; Fed. Cas. No. 15999.)

PROCESS.

RULE 7.

Compulsory process.—The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

Process, issuance of.—Process in the circuit courts can only be issued within the limits of their respective districts (Herndon v. Ridgway, 17 How.

424); and against a person not an inhabitant of or found in the district process will not issue (Picquet v. Swan, 5 Mason, 35; Fed. Cas. No. 11134); therefore the attachment of property to compel appearance can only be used where persons are amendable to the process of these courts. (Toland v. Sprague, 12 Peters, 300; Nazro v. Cragin, 3 Dill. 474; Fed. Cas. No. 10062; Picquet v. Swan, 5 Mason, 35; Fed. Cas. No. 11134; Ex parte Graham, 3 Wash. C. C. 456; Fed. Cas. No. 5651.)

RULE 8.

Final process.—Final process to execute any decree may, if the decree be solely for the payment of money, be by writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerks shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall is-

sue against his estate upon the return of *non est inventus,* to compel obedience to the decree.

Final process.—Final process cannot be served outside of the district, except in another district in the same State; or where in favor of the United States, in any part of the United States. (Revised Statutes, secs. 985, 986, ante; Toland v. Sprague, 12 Peters, 300.) A discharge will not be granted under an execution until full and exact compliance with the decree. (Gwin v. Breedlove, 2 How. 29; Griffin v. Thompson, 2 How. 245; McFarland v. Gwin, 3 How. 720.) A decree will be considered final where the court passed upon all of the merits of the case, leaving nothing to be further disposed of except to carry it into effect, though by inadvertence no time was prescribed therein within which certain conveyances were to be executed. (Desvergers v. Parsons, 23 U. S. App. 239; 60 Fed. Rep. 143.)

RULE 9.

Writ of assistance.—When any decree or order is for the delivery of possession upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

Process, writ of assistance.—The writ of assistance is an appropriate process against parties bound by decree who refuse to surrender possession. (Terrell v. Allison, 21 Wall. 289; Pratt v. Burr, 5 Biss. 36; Fed. Cas. No. 11372.) The power to act under this writ extends only to parties to suit and those coming in under them after suit commenced. (Thompson v. Smith, 1 Dill. 458; Fed. Cas. No. 13977.)

RULE 10.

Parties, how affected.—Every person not being a party in any cause who has obtained an order, or in whose favor any order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person not being a party in any cause against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

SERVICE OF PROCESS.

RULE 11.

Subpoena, when to issue.—No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

RULE 12.

When returnable.—Whenever a bill is filed the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are

more than one defendant a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

Subpoena, when returnable.—Subpoena must be made returnable at least twenty days after it is served or it is irregular. (Treadwell v. Cleveland, 3 McLean, 283; Fed. Cas. No. 14155.)

RULE 13.

Service, how made.—The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same, to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

Amended May. 3, 1872, 21 Wall. v.

Subpoena, service of.—Service of subpoena should be strictly according to the rule. (Hyslop v. Hoppock, 5 Ben. 533; Fed. Cas. No. 6989.) These courts have no means of effecting constructive service (Parsons v. Howard, 2 Woods, 1; Fed. Cas. No. 10777; Reid v. Rochereau, 2 Woods, 151; Fed. Cas. No. 11669); such service would not give these courts jurisdiction. (Hyslop v. Hoppock, 5 Ben. 533; Fed. Cas. No. 6989.) But where the court has jurisdiction of the parties, it may acquire jurisdiction of the subject matter by substituted service (Hinter v. Suckley, 2 Wash. C. C. 465; Fed. Cas. No. 6543; Seegee v. Thomas, 3 Blatchf. 11; Fed. Cas. No. 12633), on the attorney of the adverse party. (Read v. Consequa, 4 Wash C. C. 174; Fed. Cas. No. 11606.) Such service

is only good in cases of injunction to stay proceedings at law, and in cross suits in equity, and then only on the attorney of adverse party in such proceedings. (Eckert v. Bauert, 4 Wash. C. C. 370; Fed. Cas. No. 4266; Ward v. Seabry, 4 Wash. C. C. 426; Fed. Cas. No. 17161; Ward. v. Seabring, 4 Wash. C. C. 472; Fed. Cas. No. 17160; Doe v. Johnston, 2 McLean, 323; Dunn v. Clark, 8 Peters, 1; Lowenstein v. Glidewell, 5 Dill. 325; Fed. Cas. No. 8575.) Such service is only allowed after application and order therefor (Pac. R. R. Co. v. Mo. Ry. Co., 1 McCrary, 647; 3 Fed. Rep. 772), on proof that it is impossible within a reasonable time to make actual or personal service. (Bronson v. Keokuk, 2 Dill. 498; Fed. Cas. No. 1928.) A motion for substituted service of the subpoena to answer a bill in equity should not be granted, unless on the face of the bill there is some legal or equitable merit. (Muhlenberg Co. v. Citizens' Nat. Bank, 65 Fed. Rep. 537.) Service on the husband alone would have been good service on both husband and wife prior to amendment of rule. (Robinson v. Cathcart, 2 Cranch C. C. 590; Fed. Cas. No. 11946.) Service may now be made by leaving at place of abode with adult member of family. (O'Hara v. McConnell, 3 Otto, 151; Phoenix M. I. Co. v. Wulf, 9 Biss. 285; 1 Fed. Rep. 775.) But the delivery of a subpoena to a person described as "an adult person who is a resident of the place of abode" of the defendant is not sufficient, because it does not show that the person is a resident or member of the family. (Blythe v. Hinckley, 84 Fed. Rep. 228.) No subpoena can be served out of the district for which it is issued. (Jobbins v. Montague, 5 Ben. 425; Fed. Cas. No. 7329.) Appearance without exception waives all irregularity in the service of subpoena. (Gracie v. Palmer, 8 Wheat. 699; Thayer v. Wales, 9 Blatchf. 170; Fed. Cas. No. 13871.) A general notice to persons to appear is not a sub-

poena. (Young v. Montgomery etc. Co., 2 Woods, 607; Fed. Cas. No. 18166.) Proceedings which are technically original, but which are in fact ancillary, require process, but service of such process may be made in many of such cases upon the attorney or agent, when permitted by order of court. (Gregory v. Pike, 79 Fed. Rep. 520.)

RULE 14.

Alias subpoena.—Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties* against such defendant, if he shall require it, until due service is made.

RULE 15.

Who to make service.—The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

Service, how and by whom made.—Process should be served by the marshal or his regular deputy (U. S. v. Montgomery, 2 Dall. 335), or by a deputy specially appointed by him (Hyman v. Chales, 12 Fed. Rep. 855), or by some other person specially appointed by the court (Jobbins v. Montague, 5 Ben. 425; Fed. Cas. No. 7329), as soon as can reasonably be done. (Kennedy v. Brent, 6 Cranch, 187.) The marshal will exercise his judgment and make his return at his peril (Wortman v. Conyngham, 1 Peters C. C. 241; Fed. Cas. No. 18056), and he is liable for any injury arising through failure to properly perform his duty on his own part (Life & F. Ins. Co. v. Adams, 9 Peters,

573; Harriman v. Rockaway B. P. Co., 5 Fed. Rep. 461), or through failure of his deputy. (U. S. v. Moore, 2 Brock, 317; Fed. Cas. No. 15802.)

RULE 16.

Entry on docket on return.—Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

RULE 17.

Day of.—The appearance day of the defendant shall be the rule day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

Entry of.—The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

Time of—Effect of.—Defendant must usually appear within the time limited (Treadwell v. Cleveland, 3 McLean, 283; Fed. Cas. No. 14155); but further time will be granted when injustice will follow a refusal to do so. (Poulney v. Lafayette, 12 Peters, 472.) Defendants may waive process and appear, and are then bound as if regularly served. (Nelson v. Moon, 3 McLean, 319; Fed. Cas. No. 10111; Carrington v. Brent, 1 McLean, 167; Fed. Cas. No. 2446.) Regularity of service is admitted by appearance without exception in person (Gracie v. Palmer, 8 Wheat. 699;

(Goodyear v. Chaffee, 3 Blatchf. 268; Fed. Cas. No. 5564; Marye v. Strouse, 5 Fed. Rep. 494), or by attorney. (Knox v. Summers, 3 Cranch, 496.) Having appeared, defendant cannot complain that bill contains no prayer for process. (Segee v. Thomas, 3 Blatchf. 11; Fed. Cas. No. 12633.) Appearing for purpose of moving to dismiss for want of jurisdiction is a voluntary appearance (Jones v. Andrews, 10 Wall. 327), but appearing for purpose of moving to strike case from docket because no process had been served does not waive service. (Dorr v. Gibbonney, 3 Hughes, 382; Fed. Cas. No. 4006.) Appearance after service by a fictitious name is not binding, nor does it make such person a party. (Kentucky etc. Co. v. Day, 2 Sawy. 468; Fed. Cas. No. 7719.) But appearance of a corporation by fictitious name is good, being an admission that such is its name. (Virginia etc. Co. v. U. S., Taney, 418; Fed. Cas. No. 16973.) Where an appearance is unauthorized, the party is not bound by it (Shelton v. Tiffin, 6 How. 163), but it is not necessary that the authority should appear on the record. (Osborne v. U. S. Bank, 9 Wheat. 739.) One who files an intervening petition thereby submits himself to the jurisdiction of the State court. (Bowdoin College v. Merritt, 59 Fed. Rep. 6.)

BILLS TAKEN PRO CONFESSO.

RULE 18.

Default.—It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court upon motion for that purpose, to file his plea, demurrer, or answer to the bill in the clerk's office, on the rule day next succeeding that of entering his appearance. In default thereof the plaintiff may, at his

election, enter an order (as of course) in the order book that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte,* and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

Amended October 28, 1878, 7 Otto, viii.

Default.—A bill cannot be taken for confessed when at same time defendant appears and tenders his answer (Halderman v. Halderman, Hemp. 407; Fed. Cas. No. 5908); but the court may impose such terms on defendant as are just. (Halderman v. Halderman, Hemp. 407; Fed. Cas. No. 5908.) A final decree for want of appearance cannot be rendered at the first term after service of subpoena, unless another rule day has intervened. (O'Hara v. McConnell, 93 U. S. 150.) In an infringement suit, where a decree pro confesso is taken and the cause referred to a master for an accounting, the only question open to the master is the amount of damages and profits (Reedy v. Western Electric Co., U. S. App., 83 Fed. Rep. 709.) A decree pro confesso entered after striking

defendant's answer from the files as a punishment for contempt is void for want of due process of law. (Hovey v. Elliott, 167 U. S. 409.)

RULE 19.

Decree on default.—When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso,* and such decree rendered shall be deemed absolute, unless the court shall at the same term set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

Amended October 28, 1878, 7 Otto, viii.

Decree.—A decree under this rule is merely nisi, and will not be made absolute until succeeding term of court. (Pendleton v. Evans, 4 Wash C. C. 336; Fed. Cas. No. 10920; Boudinot v. Symmes, Wall. C. C. 139; Fed. Cas. No. 1695; O'Hara v. McConnell, 3 Otto, 150.) A default will usually be set aside, on motion, on condition that defendant plead to the merits and go to trial. (Kemball v. Stewart, 1 McLean, 332; Fed. Cas. No. 7682.) When irregularly entered default will be set aside on motion. (Fellows v. Hall, 3 McLean, 281; Fed. Cas. No. 4722.) When decree pro confesso will be set aside, see Stuart v. City of St.

Paul, 63 Fed. Rep. 644. Where defendant has appeared notice should be given of application for final decree after order pro confesso. (Bennett v. Hoefner, 17 Blatchf. 341; Fed. Cas. No. 1320.) A decree entered pursuant to an order pro confesso on a cross-bill will be set aside where it appears that there were serious irregularities in the service of subpoena on cross-bill, and that such bill was amended between the date of the order pro confesso and the date of the decree (Blythe v. Hinckley, 84 Fed. Rep. 228), and such decree may be set aside at the subsequent term. (Blythe v. Hinckley, 84 Fed. Rep. 228.) It seems that no complete and final decree can be entered pursuant to an order pro confesso on a cross-bill while there is pending and undetermined a motion to dismiss the original suit for want of jurisdiction. (Blythe v. Hinckley, 84 Fed. Rep. 228.) A defendant who has appeared by solicitor is entitled to a notice of an application for a decree, after entry of an order pro confesso, for the purpose of being heard upon the form and extent of the decree. (Southern Pacific R. Co. v. Temple, 59 Fed. Rep. 17.) A final decree on a bill taken pro confesso cannot be vacated at a subsequent term where no application was made at the term at which it was rendered. (Stuart v. City of St. Paul, 63 Fed. Rep. 644.) A petition to vacate a decree should be made at the earliest possible moment. (Comly v. Buchanan, 81 Fed. Rep. 58.)

FRAME OF BILLS.

RULE 20.

Introductory part.—Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be

as follows: "To the judges of the circuit court of the United States for the district of ——: A. B., of ——, and a citizen of the State of ——, brings this his bill against C. D., of ——, and a citizen of the State of ——, and E. F., of ——, and a citizen of the State of ——. And thereupon your orator complains and says, that," etc.

Contents of, how set out.—The introductory part of the bill must give with certainty the names of all the parties. (Barth v. MaKeever, 4 Biss. 206; Fed. Cas. No. 1069.) The use of fictitious names is not naming a party within the rule. (Kentucky S. M. Co. v. Day, 2 Sawy. 468; Fed. Cas. No. 7719.) But in a suit against an inanimate object the name thereof will be sufficient. (Str. Spark v. Lee Choi Chum, 1 Sawy. 717; Fed. Cas. No. 13206.) Domicile should be averred so that it can be put in issue. (Harrison v. Nixon, 9 Peters, 483, 505.) The citizenship of every necessary party should be distinctly stated, and it must be shown that plaintiffs and defendants are citizens of different States. (Speigle v. Meredith, 4 Biss. 120; Fed. Cas. No. 13227; Merserole v. Union P. C. Co., 6 Blatchf. 356; Fed. Cas. No. 9488; National Bank v. Baack, 8 Blatchf. 137; Fed. Cas. No. 9052; Dodge v. Perkins, 4 Mason, 435; Fed. Cas. No. 3954; Findlay v. U. S. Bank, 2 McLean, 44; Fed. Cas. No. 4791; Vose v. Philbrook, 3 Story, 336; Fed. Cas. No. 17010.) These matters should all be stated in the introductory part of the bill; it is not sufficient to state them in the caption only. (Jackson v. Ashton, 8 Peters, 148. A bill "to the circuit court in chancery sitting" is sufficiently addressed. (Sterrick v. Pagsley, 1 Flipp. 350; Fed. Cas. No. 13379.) A bill which fails to give the places of residence of the parties may be corrected by amendment on motion without delay. (Harvey v. Richmond & M. Ry. Co., 64 Fed. Rep. 19.) A

court may dismiss a bill of its own motion where the bill does not contain the proper allegations in the introductory part, and such allegations are not pointed out by counsel elsewhere in the bill. (City of Carlsbad v. Tibbetts, 51 Fed. Rep. 852.)

RULE 21.

What to omit and what to state.—The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defense or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno* or any other special order pending the suit, is required, it shall also be specially asked for.

Contents of bill proper.—The bill must contain on

its face sufficient matter to maintain case of plaintiff (Harrison v. Nixon, 9 Peters, 483), but a general statement of the facts is sufficient; it is not necessary to set out all the minutia. (Dunham v. Railway Co., 1 Bond, 492; Fed. Cas. No. 4150.) There should be a prayer for general relief, and under it other relief consistent with the case made out may be granted. (English v. Foxall, 2 Peters, 595; Walden v. Bodley, 14 Peters, 156; Hobson v. McArthur, 16 Peters, 182.) Under such prayer damages may be allowed. (Penhallow v. Doane, 3 Dall. 86) or specific performance ordered. (Tayloe v. Merchants' F. I. Co., 9 How. 490); but relief entirely inconsistent with that prayed for will not be granted. (Wilson v. Graham, 4 Wash. C. C. 53; Fed. Cas. No. 17804.) A bill is not demurrable because it contains no prayer for process where the defendants who are required to answer are named both in the caption and body of the bill. (Jennes v. Landes, 84 Fed. Rep. 73.) An allegation of an essential fact in a bill by way of recital, but in such form that the existence of the fact appears by necessary implication, is good as against a general demurrer. (Investor Pub. Co. v. Dobinson, 72 Fed. Rep. 603.) Though not entitled to relief prayed for, other relief may be granted under the general prayer. (Moore v. Mitchell, 2 Woods, 483; Fed. Cas. No. 9770.) The writ of ne exeat pending the suit must be specially prayed for. (Lewis v. Shainwald, 7 Sawy. 403; 48 Fed. Rep. 492.) A bill for rescission must contain clear and positive allegations showing the equitable right of the complainants to the relief asked. (Post v. Beacon Vacuum Pump Co., U. S. App., 84 Fed. Rep. 371.) A petition stating a decree entered in a former proceeding, either as matter of inducement or as the basis of plaintiff's action, need not set out the petition on which such decree was rendered. (Davis v. Davis, 65 Fed. Rep. 380.) A bill in equity charging

fraud should state the facts relied on with sufficient particularity to justify the conclusion and to apprise the defendant of what he must meet in the way of evidence, but this should be done without undue minuteness of detail. (Field v. Hastings & Bradley Co., 65 Fed. Rep. 279.) The court may of its own motion dismiss a bill because it fails to state facts sufficient to give any equitable relief. (Fourgeres v. Jones, 66 Fed. Rep. 316.) In a suit to recover property procured by fraud, the prayer of the bill may be in the alternative that complainant recover the specific property or its value. (Hubbard v. Urton, 67 Fed. Rep. 419.) That a bill for an injunction against a violation of interstate commerce contains no prayer for process does not affect the jurisdiction of the court or render the injunction thereon void. (United States v. Agler, 62 Fed. Rep. 824.) A complaint is to be interpreted as a whole. (Prescott & A. C. R. Co. v. Atchison T. & S. Fe R. Co., 73 Fed. Rep. 438.) Strictness of pleading is not required of those who come in to assert their claims to property in a suit for the administration of a trust by foreclosure. (Blake v. Pine Mt. Iron & C. Co., 43 U. S. App. 490; 76 Fed. Rep. 624.)

Petition of intervention.—While a petition of intervention need not be as formal as a bill of complaint, yet it should exhibit all the material facts relied on, embodying, by recital or reference, so much of the record in the original suit as is essential, and proceedings taken therein, after the filing of the petition, which would fortify the right of the intervenor, should be incorporated in the petition by amendment. (Empire Distilling Co. v. McNulta, 46 U. S. App. 578; 77 Fed. Rep. 700.) It is not necessary, though it is the better practice, to give notice to the parties to the cause, of a petition of intervention in a suit for the foreclosure of a mortgage. (Lombard Inv. Co. v.

Seaboard Mfg. Co., 74 Fed. Rep. 325.) Interventions by persons interested in the funds of a receivership will not be permitted if their rights may be conserved without it, since such interventions multiply the number of litigants. (Sands v. E. A. Greeley & Co., 80 Fed. Rep. 195; Fowler v. Jarvis Conklin Mortg. Trust Co., 64 Fed. Rep. 279.)

Multifarious bills.—A bill in equity is properly dismissed on demurrer as multifarious, when it joins separate and independent matters so distinct from each other that they are not the proper subjects of attack in one suit. (Ziegler v. Lake St. El. R. Co., 46 U. S. App. 242; 76 Fed. Rep. 662; First Nat. Bank of Sioux City v. Peavey, 75 Fed. Rep. 154; Hayden v. Thompson, 67 Fed. Rep. 273; Aetna Life Ins. Co. v. Smith, 73 Fed. Rep. 318; Holton v. Wallace, 66 Fed. Rep. 409; Merriman v. Chicago & E. I. Ry. Co., 24 U. S. App. 428; 64 Fed. Rep. 535; Leslie v. Leslie, 84 Fed. Rep. 70; Church v. Citizens' St. Ry. Co., 78 Fed. Rep. 526.) An objection to a bill for multifariousness cannot be taken merely at the hearing, but must be specially stated by demurrer or other pleading. (Ranger v. Champion Cotton Press Co., 52 Fed. Rep. 611.) Whether or not a bill is multifarious is a question which rests largely in the discretion of the court. (California Fig S. Co. v. Worden & Co., 86 Fed. Rep. 212; Ulman v. Jaeger, 67 Fed. Rep. 980.) No bill is multifarious which presents a common point of litigation, the decision of which will affect the whole subject matter and settle the rights of all the parties. (Curran v. Champion, 56 U. S. App. ——; 85 Fed. Rep. 67.)

RULE 22.

Parties out of jurisdiction.—If any person, other than those named as defendants in the bill, shall appear to be necessary or proper parties

thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

Absence of necessary parties.—Where necessary parties are out of the jurisdiction it should so appear on the pleadings. (Tobin v. Walkinshaw, 1 McAll. 26; Fed. Cas. No. 14068.)

RULE 23.

Prayer for process.—The prayer or process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

Prayer for process.—The omission from the prayer for process of subpoena of the names of some of the defendants named in the introductory part of the bill, is a violation of the above rule and is a fatal defect. (Goebel v. American Ry. Supply Co., 55 Fed Rep. 825.) But a bill is not demurrable because it contains no

prayer for process where the defendants who are required to answer are named both in the caption and in the body of the bill. (Jennes v. Landes, 84 Fed. Rep. 73. See, also, United States v. Agler, 62 Fed. Rep. 824.)

RULE 24.

Signature of counsel.—Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

Signature of counsel.—Unless signed by counsel, the bill is demurrable. But signing on the back is sufficient. (Dwight v. Humphrey, 3 McLean, 104; Fed. Cas. No. 4216.) Signing as "solicitor" is sufficient, and as proper as signing "of counsel." (Stinson v. Hildrup, 8 Biss. 376; Fed. Cas. No. 13459.) Being ordered off the files, the bill may be signed, and on motion restored. (Roach v. Hulings, 5 Cranch C. C. 637; Fed. Cas. No. 11874.)

RULE 25.

Taxable costs.—In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.
RULE 26.

Surplusage.—Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in *haec verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any judge of the court for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

Impertinence and scandal.—Scandal in a pleading consists of any unnecessary allegation bearing cruelly on the moral character of an individual, or stating anything contrary to good manners or anything unbecoming the dignity of the court to hear. Impertinence consists of any allegation that is irrelevant to the material issues made or tendered. (Kelley v. Boettcher, U. S. App., 85 Fed. Rep. 55.) Impertinences are matters not pertinent or relevant to the points properly before the court for decision (Wood v. Mann, 1 Sum. 578; Fed. Cas. No. 17952), or such matters as are stated with needless prolixity. (Chapman v. School District, Deady, 108; Fed. Cas. No. 2607.) Matter which is entirely immaterial is impertinent, and should be expunged. (Langdon v. Goddard, 3 Story, 13; Fed. Cas. No. 8061.) Where

exceptions are taken for impertinence, the pleading will be given a liberal construction. (Griswold v. Hill, 1 Paine, 390; Fed. Cas. No. 5835.) The rule that a bill in equity should contain a clear and explicit description sufficient to give the defendant notice of the subject matter of the complaint against him is not abrogated by the above rule. (Electrolibration v. Jackson, 52 Fed. Rep. 773.) The circuit court has power to order the striking from its files of a rambling and verbose bill of excessive length, containing impertinent and scandalous matter, and to permit complainants to file within a stated time, as of the date of the original filing, a new bill not exceeding a prescribed length. (Kelley v. Boettcher, U. S. App. 85 Fed. Rep. 55.) The above rule does not abrogate or curtail the inherent power of the Federal courts in equity to strike out rambling or tautological pleadings, and purge their records of scandalous or impertinent matter, on their own motion, and in the absence of exceptions. (Kelley v. Boettcher, U. S. App., 85 Fed. Rep. 55.) Mere argument in an answer as to the effect of facts already apparent in the bill is impertinent, and upon exception will be stricken out. (Florida Mortg. & Inv. Co. v. Finlayson, 74 Fed. Rep. 671.)

RULE 27.

Exceptions, how taken.—No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent: nor unless the exceptions shall be filed on or before the next rule day after the process on

the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

Allowance of exception.—An exception taken for impertinence must be allowed in whole or not at all. (Chapman v. School District, Deady, 108; Fed. Cas. No. 2607.)

AMENDMENT OF BILLS.

RULE 28.

As of course.—The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matter whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filing blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like

manner to the defendant a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

Amendments of bills.—Amendments are only allowed where the bill is defective in parties, the prayer, or in omission of some fact connected with the substance of the case. (Shields v. Barrow, 17 How. 130; Pendency v. Carleton, U. S. App. 87 Fed. Rep. 41.) To insert a wholly different case is not properly an amendment. (Shields v. Barrow, 17 How. 130); Goodyear v. Bourn, 3 Blatchf. 266; Fed. Cas. No. 5561.) Certain amendments will be permitted at any stage of the case, as to bring in an essential party (Walden v. Bodley, 14 Peters, 156; Shields v. Barrow, 17 How. 130; Harrison v. Rowan, 4 Wash. C. C. 202; Fed. Cas. No. 6143), or to aver citizenship (Fisher v. Rutherford, Bald. 188; Fed. Cas. No. 4823; Hilliard v. Brevoort, 4 McLean, 25; Fed. Cas. No. 6505); or to leave out a party who has no interest in the suit (Hubbard v. Manhattan Trust Co., U. S. App. 87 Fed. Rep. 51); but amendments which change the character of the bill should rarely be admitted after the case is set for hearing. (Walden v. Bodley, 14 Peters, 156); or after replication. (Bass, R. & G. v. Feigenspan, 82 Fed. Rep. 261.) New matter which accrued since filing original bill cannot be introduced by amendment, but only by supplemental bill. (Copen v. Flesher, 1 Bond, 440; Fed. Cas. No. 3211; Swatzel v. Arnold, Woolw. 383; Fed. Cas. No. 13682.) Courts of equity are indulgent in allowing amendments of pleadings in matters of form or detail, but are slow to allow amendments of substance. (Schultz v. Phoenix Ins. Co., 77 Fed. Rep. 375.) Amending a bill on which an injunction was granted does not usually affect the injunction. (Read v. Consequa, 4 Wash.

C. C. 175; Fed. Cas. No. 11606.) Process need not be issued on an amended bill against defendants who are in court, and therefore have notice. (Longworth v. Taylor, 1 McLean, 514; Fed. Cas. No. 8491.) Proper procedure is to file an amended bill, and not to interline original bill. (Pierce v. West, 3 Wash. C. C. 355; Fed. Cas. No. 10910.) Such amended bill should state no more of the original bill than may be necessary to make intelligible the amendments. (Pierce v. West, 3 Wash. C. C. 355; Fed. Cas. No. 10910.) Where a bill has been dismissed on demurrer for laches because no sufficient explanation of the delay is pleaded, the appellate court may, in the absence of positive inequity, reverse the decree and direct the allowance of an amendment to the bill. (Hubbard v. Manhattan Trust Co., U. S. App.; 87 Fed. Rep. 51.) If a bill makes a corporation a party defendant, and the amended bill recites the substance of the original bill and makes the same a part thereof, the corporation is a party defendant to the amended bill. (Empire Coal & Trans. Co. v. Empire Coal & Min. Co., 150 U. S. 159.) When a bill is amended in a material matter the defendant is entitled to time to answer the amended bill, which, unless fixed by agreement or special rule, should be the same length of time allowed for answering the original bill. (Nelson v. Eaton, 66 Fed. Rep. 376.) It is error to strike from the files an amendment to a bill which explains the delay of complainant in bringing suit. (Lant v. Manley, 43 U. S. App. 623; 75 Fed. Rep. 627.) A bill which is defective for want of proper form may be amended when there has been no general appearance, demurrer, plea, or answer. (Insurance Co. v. Svendsen, 74 Fed. Rep. 346.) Amendments should not be permitted after the announcement of the final decision of the chancellor on the merits of the case. (Blair v. Harrison, 18 U. S. App. 27; 57 Fed. Rep. 257.)

RULE 29.

By order of court.—After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

Amendment after answer.—Matter which could not sooner have been introduced may be allowed by amendment after replication. (Wharton v. Lowrey, 2 Dall. 264); but where it could have been done sooner, even in small matters, the amendment will not be allowed. (Ross v. Carpenter, 6 McLean, 382; Fed. Cas. No. 12072; Clifford v. Coleman, 13 Blatchf. 210; Fed. Cas. No. 2894.) If, after replication, an amended bill be filed without leave, it will on motion be stricken from the files. (Washington R. R. Co. v. Braley, 10 Wall. 299.) Where demurrer to bill is sustained, if justice require it this court may allow an amendment (Hunt v. Rousmaniere's Admr., 2 Mason, 342; Fed. Cas. No.

6898); but where a case has been dismissed for want of jurisdiction the bill cannot be amended nor cause restored. (Jackson v. Ashton, 10 Peters, 480.) This court has power, even after hearing, where a cause for relief is made out, but not that shown in the bill to allow amendments so as to do substantial justice. (Neale v. Neales, 9 Wall. 1; The Tremolo Patent, 23 Wall. 518; Battle v. Mutual L. I. Co., 10 Blatchf. 418; Fed. Cas. No. 1109.) Amendments regularly made cannot be avoided by a motion to set them aside. (Lichtenaur v.Cheney, 3 McCrary, 119; 8 Fed. Rep. 876.) After an interlocutory decree on the merits, referring the cause to a master to take an account, defendants acquire such an interest in the suit that plaintiffs cannot discontinue as of right. (Garner v. Second Nat. Bank, 33 U. S. App. 91; 67 Fed. Rep. 833.) After the announcement of the final decision of the chancellor upon the merits of the case it is proper to permit the pleadings to be amended so as to meet objections which were raised at the hearing. (Claflin v. Bennett, 51 Fed. Rep. 693.)

RULE 30.

Order, when abandoned.—If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

RULE 31.

When allowed.—No demurrer or plea shall be

allowed to be filed to any bill, unless upon a certificate of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and if a plea, that it is true in point of fact.

Certificate of counsel, affidavit, etc.—Where pleas or demurrers are not accompanied by the proper certificate and affidavit, they should be disregarded (National Bank v. Insurance Co., 14 Otto, 55, 76; Secor v. Singleton, 3 McCrary, 230; 9 Fed. Rep. 809; Filer v. Levy, 17 Fed. Rep. 610; Sheffield Furnace Co. v. Witherow, 149 U. S. 574; Preston v. Finley, 72 Fed. Rep. 850); but if plaintiff, instead of disregarding it, demur to it, he waives the certificate and affidavit. (Goodyear v. Toby, 6 Blatchf. 130; Fed. Cas. No. 5585.) There is no equity rule requiring a certificate of counsel that an answer to the merits is well founded in law. (McGorray v. O'Connor, U. S. App., 87 Fed. Rep. 586.)

RULE 32.

With leave of court.—The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

Allowance of.—Defendant may meet plaintiff's bill

either by demurrer, plea, or answer (Livingston v. Story, 9 Peters, 632), at any time before the bill is taken for confessed. (Oliver v. Decatur, 4 Cranch C. C. 458, Fed. Cas. No. 10494.) A demurrer to the whole bill must be overruled if any part of it is sufficient. (Atwill v. Ferrett, 2 Blatchf. 39, Fed. Cas. No. 640; Heath v. Erie R. R. Co., 8 Blatchf. 348, Fed. Cas. No. 6306; Brandon Co. v. Prime, 14 Blatchf. 371, Fed. Cas. No. 1810; Perry v. Littlefield, 17 Blatchf. 273, Fed. Cas. No. 11008; Livingston v. Story, 9 Peters, 632; Whitenack v. Philadelphia & R. R. Co., 57 Fed. Rep. 901.) A demurrer in part followed by an answer to the rest is proper and allowable. (Perpont v. Fowle, 2 Wood. & M. 23; Fed. Cas. No. 11152; Crescent City Co. v. Butchers' etc. Co., 12 Red. Rep. 225.) Where the demurrer or plea and answer is to the same matter, defendant may be compelled to elect by which he will abide. (Hayes v. Dayton, 18 Blatchf. 420; 8 Fed. Rep. 702.) A plea to a bill in equity which states nothing but conclusions of law, and which goes to the whole bill, but is accompanied by an answer to the whole bill, is properly disregarded. (Hudson v. Randolph, 23 U. S. App. 216; 66 Fed. Rep. 216; Marshall v. Otto, 59 Fed. Rep. 249.) A demurrer that the plea is defective in not responding to all allegations in the bill is not good, for a plea may be to the whole bill or to part only (Beard v. Bowler, 2 Bond, 13, Fed. Cas. No. 1180). The court may allow a second demurrer to be filed after the time required, when the first demurrer was filed within the time (Harvey v. Richmond & M. Ry. Co., 64 Fed. Rep. 19); a plea may also be good in part and bad in part. (Wythe v. Palmer, 3 Sawy. 412, Fed. Cas. No. 18120; Kirkpatrick v. White, 4 Wash. C. C. 595, Fed. Cas. No. 7850.) Defendant cannot as a matter of right file more than one plea (Wheeler v. McCormick, 8 Blatchf. 267, Fed. Cas. No. 17498; Lamb v. Starr,

Deady, 351, Fed. Cas. No. 8021), but when justice or necessity require it, court may allow several pleas. (Noyes v. Willard, 1 Woods, 187, Fed. Cas. No. 10374.) Where several pleas are filed without leave, defendant must elect by which he will stand. (Noyes v. Willard, 1 Woods, 187, Fed. Cas. No. 10374.) The office of a plea in a suit in equity is to present some distinct fact, which, of itself, creates a bar to the suit or to the part to which the plea applies. (United States v. California & Oregon L. Co., 148 U. S. 31.) Fraud alleged in the bill must be denied as well where a plea is entered as when an answer is filed. (Lewis v. Baird, 3 McLean, 56, Fed. Cas. No. 8316; Burnley v. Jeffersonville, 3 McLean, 336, Fed. Cas. No. 2181; Shelton v. Tiffin, 6 How. 163; House v. Mullen, 22 Wall. 42.) By consent of plaintiff the court may determine a question of jurisdiction raised by defendant by motion to dismiss the bill instead of by demurrer or plea. (Bicycle Stepladder Co. v. Gordon, 57 Fed. Rep. 529.) A plea containing a full defense to the bill is waived by filing an answer which goes to the whole bill; but if the answer does not go to the whole bill, and is filed merely to fortify the plea by denying allegations of fraud, this is in accordance with the above rule. (Huntington v. Laidley, 79 Fed. Rep. 865.) A plea to the bill is generally inappropriate to suits in equity for infringement of a patent. (Knox Rock Blasting Co. v. Rairdon Stone Co., 87 Fed. Rep. 969.) A plea should state some single objection to the plaintiff's case which would be a complete defense, either to the whole bill, or to some distinct part of it. (Knox Blasting Co. v. Rairdon Stone Co., 87 Fed. Rep. 969.) One who is made a party to a foreclosure suit, but who does not owe any part of the debt or have possession of any part of the property, or has not the legal title thereto, cannot, by demurrer, set up the statute of limitations.

(Blair v. Silver Peak Mines, 84 Fed. Rep. 737.) A defendant in an equity suit may let the facts in the bill go unchallenged, and by plea set up some special matter which, if established and sufficient, will defeat a recovery. (United States v. California & Oregon Land Co., 148 U. S. 31.) Laches is a defense which may be made by demurrer, or by plea, or by answer, or presented on argument, either upon preliminary or final hearing. (Woodmanse & Hewitt Mfg. Co. v. Williams, 37 U. S. App. 109; 68 Fed. Rep. 489.) Negative pleas are permitted. (Rhino v. Emery, 79 Fed. Rep. 483). Where the case of complainant stands solely on the bare averment of a particular fact, without the averment of evidence in the bill to support it, it is not necessary for the defendant to file an answer in support of the plea. (Rhino v. Emery, 79 Fed. Rep. 483.) A demurrer to a bill admits all the allegations which are material and well pleaded. (Cobb v. Clough, 83 Fed. Rep. 604.) Where the bill shows that the claim is barred by lapse of time or laches, defendant may avail himself of the objection by demurrer. (Merrill v. Monticello, 66 Fed. Rep. 165; Hinchman v. Kelley, 7 U. S. App. 481; 54 Fed. Rep. 63.) Upon demurrer to a bill exhibits are to be taken as part of the bill (Ulman v. Jaeger, 67 Fed. Rep. 980), and the whole bill must be taken as true, and matter in avoidance is not available. (Puget Sound Nat. Bank v. King Co., 57 Fed. Rep. 433.) A general demurrer waives objection that the plea is not verified, or supported by certificate of counsel, as required by the rules of the court. (Griswold v. Bacheller, 77 Fed. Rep. 857.)

RULE 33.

Argument on plea.—The plaintiff may set down the demurrer or plea to be argued, or he may take

issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

Plea, argument on—Replication to.—If plea is in proper form, plaintiff should either set it down for argument or reply, and take issue on it. (Rhode Island v. Massachusetts, 14 Peters, 210.) Where, without reply, plaintiff set down the plea for argument, all the facts well pleaded are considered as admitted (Mellus v. Thompson, 1 Cliff. 125, Fed. Cas. No. 9405; Parton v. Prang, 3 Cliff. 537, Fed. Cas. No. 10784; S. C. 2 Off. Pat. Gaz. 619; Gallagher v. Roberts, 1 Wash. C. C. 320, Fed. Cas. No. 5194; United States v. California & Oregon L. Co., 148 U. S. 31); plaintiff merely denying their legal sufficiency to prevent a recovery. (Rhode Island v. Massachusetts, 14 Peters, 210.) Where an issue of fact upon the traverse of a plea to a bill in equity is found in part for each party, the defendant, under the above rule, is entitled to the benefit of the facts so found for him, and the decree must be limited accordingly. (Earll v. Metropolitan St. Ry. Co., 87 Fed. Rep. 528.) If plaintiff, instead of setting down plea for argument, reply and take issue on it, he admits its sufficiency as a defense, if the facts it alleges shall be established (Myers v. Dorr, 13 Blatchf. 23, Fed. Cas. No. 9988), and if the facts are proven the dismission of the bill is simply a matter of course. (Gernon v. Boccaline, 2 Wash. C. C. 199, Fed. Cas. No. 5366.) The question whether a defendant may set up a certain defense by means of a plea may be determined by the court upon a motion to strike the plea from the files. (Union Switch & S. Co. v. Philadelphia & R. R. Co., 69 Fed. Rep. 833.) A plaintiff, by filing a replication to a petition in intervention and proceeding to a hearing, waives

the right to object to the sufficiency of a petition, or to the absence of an order granting leave to intervene. (Perry v. Godbe, 82 Fed. Rep. 141.) The only method by which complainant may test the sufficiency of a plea, or, if its sufficiency is conceded, the truth of its averments, consists either in setting down the plea for argument, or in taking issue upon it as to facts. (Hatch v. Bancroft Thompson Co., 67 Fed. Rep. 802.) Where a complainant has a demurrer and plea set down for argument, instead of moving to strike them from the files or filing a replication, he waives the question whether the defendant has not by his previous action in the suit waived the defense set up by the plea and demurrer. (Farmers' L. & T. Co. v. Chicago & Northern Pac. Ry. Co., 61 Fed. Rep. 543.) By filing a replication to a plea of res judicata the complainants admit the sufficiency of the plea, and it is contrary to equity practice to permit the question to be raised at the final hearing. (McAleer v. Lewis, 75 Fed. Rep. 734.) The filing of a demurrer to a plea, instead of setting the plea down for argument, is contrary to equity procedure, but if no substantial rights have been affected thereby, the irregularity may be ignored, and the filing of a demurrer may be treated as an equivalent of setting the plea down for argument. (Zimmerman v. So Relle, 49 U. S. App. 387; 80 Fed. Rep. 417.) Under the last sentence of the above rule the decision of the cause does not depend wholly upon the truth of the allegations of the plea, but the complainant may avoid it by proof of other facts. (Elgin Wind Power & P. Co. v. Nichols, 24 U. S. App. 542; 65 Fed. Rep. 215.) After a hearing on a plea set down for argument under the above rule the court has power without passing upon the merits of the plea to overrule it and direct defendant to file and answer. (Chisholm v. Johnson, 84 Fed. Rep. 384.) If the facts stated in the

plea are determined for the defendant and the plea meets and satisfies all the claims of the bill, the defendant should have a final decree in his favor. (Horn v. Detroit Dry Dock Co., 150 U. S. 610.)

RULE 34.

Costs on demurrer overruled.—If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him, *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

Demurrer overruled.—On overruling of demurrer or plea, defendant may answer as matter of right. (Sims v. Lyle, 4 Wash. C. C. 303, Fed. Cas. No. 12891; Wooster v. Blake, 7 Fed. Rep. 816.) In such cases before a bill can be taken for confessed, the defendant must have been ruled to answer. (Halderman v. Halderman, Hemp. 407, Fed. Cas. No. 5908.) Where some of defendants fail to answer, the bill as to them may be taken as confessed. (Suydam v. Beals, 4 McLean, 12, Fed. Cas. No. 13653.) If the decree is taken pro confesso before the time given to answer

has expired, it will be set aside on motion. (Fellows v. Hall, 3 McLean, 487; Fed. Cas. No. 4723.) Where a plea is filed in good faith and under a reasonable belief that the plea is good, but it is decided to be otherwise, costs should not be allowed to complainant under the above rule. (Chisholm v. Johnson, 84 Fed. Rep. 384.) A general demurrer should be overruled unless it appears that on no possible state of the evidence could a decree be made. (Failey v. Talbee, 55 Fed. Rep. 892.) It is contrary to correct practice for the court, upon a demurrer to a bill to consider evidence submitted by consent of the parties. (Stratton v. Dewey, 79 Fed. Rep. 32.) When a demurrer to a plea in chancery is overruled, complainant should be given leave to reply. (McVeagh v. Denver City Waterworks, 55 U. S. App.; 85 Fed. Rep. 74.)

RULE 35.

Costs on demurrer allowed.—If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

Demurrer allowed.—Costs are allowed in the discretion of the court. (Brooks v. Byam, 2 Story, 553; Fed. Cas. No. 1949.) Plaintiff is not entitled as a matter of right to amend his bill after a demurrer thereto is sustained (National Bank v. Carpenter, 11 Otto, 567; Hunt v. Rousmaniere's Admr., 2 Mason, 342; Fed. Cas. No. 6898); but the court may in its discretion grant him leave to amend on reasonable terms. (Hunt v. Rousmaniere's Admr., 2 Mason, 342; Fed. Cas. No. 6898; Dwight v. Humphreys, 3 McLean, 104; Fed. Cas. No. 4216; Ketchum v. Driggs, 6 McLean, 13; Fed. Cas. No. 7735.) Amendments thus al-

lowed do not affect the jurisdiction, but relate back to and become part of the original bill. (Gaylor v. R. R. Co., 6 Biss. 286; Fed. Cas. No. 5284.) An order refusing leave to thus amend cannot be reviewed in the supreme court. (National Bank v. Carpenter, 11 Otto, 567.)

RULE 36.

Demurrer, sufficiency of.—No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

RULE 37.

Demurrer and answer to same matter.—No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Effect of.—Where the same matter is covered both by answer and by plea the plea will stand in the place of the answer and overrule it. (Lewis v. Baird, 3 McLean, 56; Fed. Cas. No. 8316; Ferguson v. O'Hara, 1 Peters C. C. 493; Fed. Cas. No. 4740.) But the above rule does not apply where the plea extends to the whole bill. (Huntington v. Laidley, 79 Fed. Rep. 865.) Defendant cannot demur, plead, and answer to the whole bill at the same time. (Crescent City Co. v. Butcher's etc. Co., 12 Fed. Rep. 225. Where the answer is broader than the plea the latter is overruled. (Lewis v. Baird, 3 McLean, 56, Fed. Cas. No. 8316.) The proper course in these cases is a motion to strike out, or to compel defendant to elect between an answer, demurrer, and plea. (Hayes v. Dayton, 18 Blatchf. 420; 8 Fed. Rep. 702.) But if

plaintiff go to trial on plea or demurrer, he cannot object on the argument that the answer is a waiver of demurrer or plea. (Hayes v. Dayton, 18 Blatchf. 420; 8 Fed. Rep. 702.) That a plea is superseded by an answer filed at the same time, see Hudson v. Randolph, U. S. App. 66 Fed. Rep. 216; Marshall v. Otto, 59 Fed. Rep. 249. Under the above rule pleas in bar and estoppel to the complaint will not be stricken out because they go to the same matter covered by the answer when such pleas do not cover the whole bill, and, though covering the same ground as the answer, show different grounds of defense. (Mercantile Trust Co. v. Missouri K. & T. Co., 84 Fed. Rep. 379.)

RULE 38.

Admission by failure to reply.—If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for the purpose.

Dismissal on failure to reply.—Where a plea exists which has not been replied to or set down for hearing before the second term after filing, cause will be dismissed. (Poultney v. Lafayette, 3 How. 81; Parton v. Prang, 3 Cliff. 537; S. C. 2 Off. Pat. Gaz. 619; Fed. Cas. No. 10784.) A replication to a plea admits its sufficiency as much as if set down for argument and allowed. (Hughes v. Blake, 6 Wheat. 453.) If instead of filing replication plaintiff set down cause for hearing, this admits the truth of everything well pleaded. (Parton v. Prang, 3 Cliff. 537; Fed. Cas. No.

10784; Leeds v. Marine Ins. Co., 2 Wheat. 380.) But a bill will not be dismissed unless the party had proper notice under Rule 4 of filing pleas or demurrers. (Newby v. Oregon C. R. R. Co., 1 Sawy. 63; Fed. Cas. No. 10145.) If a plea or demurrer is insufficient under Rule 31 in not having proper certificate and affidavit, failure to act on it is no ground for dismissal. (National Bank v. Insurance Co., 14 Otto, 54.) After decree for defendant, complainant cannot have his bill dismissed because of his own neglect to reply to a plea filed by a party who never insisted upon dismissal, nor took any exceptions to the refusal of the court to dismiss the bill. (Chicago etc. R. R. Co. v. Union Rolling M. Co., 109 U. S. 702.) The above rule does not apply in a court where all days are treated as rule days. (Electrolibration Co. v. Jackson, 52 Fed. Rep. 773.)

ANSWERS.

RULE 39.

Sufficiency of.—The rule, that if the defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of

such plea, touching the matters set forth in the bill to avoid or repel the bar or defense. Thus, for example, a *bona fide* purchaser for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

Extent and sufficiency of.—In the Federal courts, equity pleading is not governed by the State codes; and the answer should deny or expressly admit each material allegation of the bill, or if the facts are not within the knowledge of defendant his belief should be stated; otherwise the answer is insufficient. (Commonwealth T. Ins. & T. Co. v. Cummings, 83 Fed. Rep. 767.) If by answer defendant set up a bar, he need not answer further, and his failure to answer is no ground of exception (Gaines v. Agnelly, 1 Woods, 238; Fed. Cas. No. 5173), as where bar of statute of limitations is set up. (Sample v. The Bank, 1 Woods, 523; Fed. Cas. No. 12278.) But pleas to the jurisdiction do not excuse further answer. They cannot be taken advantage of by general answer (Livingston v. Story, 11 Peters, 352); but must be taken by special plea. (Wickliffe v. Owings, 17 How. 47; Wood v. Mann, 1 Sum. 578; Fed. Cas. No. 17952.) The above rule, which dispenses with a full answer in certain cases, will not protect a defendant from answering fully to interrogatories, where he has set up every possible defense, on the theory that each of these defenses might have been set up by a plea. (National H. B. B. Co. v. Interchangeable Brake Beam Co., 83 Fed. Rep. 26.) Rules applied to answers in cases wherein discovery was sought under

the early practice are not now the proper guides for determining the sufficiency of an answer. (Field v. Hastings & B. Co., 65 Fed. Rep. 279.) Under this rule an answer is not subject to exception because it fails to answer all specific interrogatories attached to the bill. (Hatch v. Bancroft T. & Co., 67 Fed. Rep. 802.) Where the answer admits the facts, but sets up matter by way of avoidance, plaintiff need not prove the facts, but defendant must prove such matter in avoidance. (Clarke v. White, 12 Peters, 178; Randall v. Phillips, 3 Mason, 378; Fed. Cas. No. 11555.) All the facts called in question must be responded to by answer, and not by plea. (Bailey v. Wright, 2 Bond, 181; Fed. Cas. No. 749.) Defendant's answer, if uncontradicted by any witness, is conclusive evidence in his favor. (Lenox v. Prout, 3 Wheat. 520; Union Bank v. Geary, 5 Peters, 98; Higbee v. Hopkins, 1 Wash. C. C. 230; Fed. Cas. No. 6466; Carpenter v. Prov. W. I. Co., 4 How. 185; Hughes v. Blake, 1 Mason, 515; Fed. Cas. No. 6845; Langdon v. Goddard, 2 Story, 267; Fed. Cas. No. 8060; Gould v. Gould, 3 Story, 516; Fed. Cas. No. 5637; Greeley v. Smith, 3 Story, 659; Fed. Cas. No. 6722.) It must be impugned by more than the testimony of one witness. (Towne v. Smith, 1 Wood. & M. 115; Fed. Cas. No. 14115; Delano v. Winsor, 1 Cliff. 501; Fed. Cas. No. 3754; Pomeroy v. Manin, 2 Paine, 476; Fed. Cas. No. 11260.) Complainant must have at least two witnesses, or one witness and corroborative circumstances, or he is not entitled to relief. (Toby v. Leonard, 2 Cliff. 40; Fed. Cas. No. 14067; Gilman v. Libbey, 4 Cliff. 447; Fed. Cas. No. 5445; Hayward v. National Bank, 4 Cliff. 294; Fed. Cas. No. 6273; Gernor v. Boccaline, 2 Wash. C. C. 199; Fed. Cas. No. 5366; Walker v. Derby, 5 Biss. 134; Fed. Cas. No. 17068.) Where the answer relies on new matter defendant must prove it; the answer is not evidence

to support it. (Randall v. Phillips, 3 Mason, 378; Fed. Cas. No. 11555.) Defendant cannot make out one case in the answer and another on the proof; the allegata and probata must agree. (Boone v. Chiles, 10 Peters, 177.) The answer of a defendant is not evidence against a codefendant (Field v. Holland, 6 Cranch, 8; Russell v. Clark, 7 Cranch, 69; Clarke's Ex. v. Van Reimsdyk, 9 Cranch, 153; Leeds v. Marine Ins. Co., 2 Wheat. 380; Morris v. Nixon, 1 How. 119); except where the defendants are partners (Van Reimsdyk v. Kane, 1 Gall. 630; Fed. Cas. No. 16872); or defendants are privies in estate. (Osborne v. U. S. Bank, 9 Wheat. 738.) Under the above rule defendant may join in his answer all matters of defense in bar or to the merits of the bill. (Holton v. Guinn, 65 Fed. Rep. 450.) Parts of an answer, though material as a defense, and scandalous in nature, will not on that account be suppressed when intended to meet charges of bad faith made in the bill. (Mercantile Trust Co. v. Missouri K. & T. Co., 84 Fed. Rep. 379.) Charges made in an answer upon information and belief only, where there is no evidence to support them, must be treated as not sustained. (Monroe Cattle Co. v. Becker, 147 U. S. 47.) When a suit is heard on bill and answer, the allegations of facts in the bill that are denied in the answer are to be taken as disproved, and the averments of fact in the answer stand admitted. (United States v. Trans-Missouri Freight Assn., 19 U. S. App. 36; 58 Fed. Rep. 58.) Equity pleading does not require the defenses of payment or setoff to be set forth in the answer, according to any particular form. (Bausman v. Denny, 73 Fed. Rep. 69.) In equity practice it is permissible to set forth matters of law, as well as matters of fact, constituting a defense. (Farmer's Loan & T. Co. v. Northern Pac. R. Co., 76 Fed. Rep. 15.)

RULE 40.

Answer of defendant to interrogatories.—A defendant shall not be bound to answer any statement or charge in the bill, unless especially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

Ordered, that the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

Amended December Term, 1850, as in second paragraph, 10 How. v.

Requisites and forms of interrogatories prior to amendment.—(See Young v. Grundy, 6 Cranch, 51; Treadwell v. Cleveland, 3 McLean, 283; Fed. Cas. No. 14155; Langdon v. Goddard, 3 Story, 13; Fed. Cas. No. 8061; Parsons v. Cumming, 1 Woods, 461; Fed. Cas. No. 10775.) Where complainant desires to obtain a discovery he must propound the interrogatories according to the rules. (Bailey v. Young, 12 Blatchf. 200; Fed. Cas. No. 751.)

Discovery.—A complainant is entitled to a discovery of such documents and facts only as will aid in the maintenance of his title or cause of action. (Kelley v. Boettcher, U. S. App., 85 Fed. Rep. 55.)

RULE 41.

Interrogatories to be numbered.—The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form, or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

Answer, when not evidence.—If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunc-

tion, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section three of the act of Congress of July 2, 1864.

See Revised Statutes, sec. 724, ante, sec. 244.

Verification of answer, waiving of.—Where plaintiff does not waive the oath to the answer he is bound to produce two witnesses, or one and circumstances corroborating him, to overthrow it (Slessinger v. Buckingham, 8 Sawy. 469; 17 Fed. Rep. 454; Latta v. Kilbourn, 150 U. S. 524; Monroe Cattle Co. v. Becker, 147 U. S. 47; Walcott v. Watson, 53 Fed. Rep. 429); but if plaintiff waive the oath the answer is not evidence. (Patterson v. Gaines, 6 How. 550.) But a waiver by bill of an oath to the answer amounts to nothing unless accepted by respondents (Amory v. Lawrence, 3 Cliff. 524; Fed. Cas. No. 336; Holbrook v. Black, 18 L. R. N. S. 89; Fed. Cas. No. 6590); and if not accepted defendant is bound to answer on oath. (Heath v. Erie R. R. Co., 8 Blatchf. 348; Fed. Cas. No. 6306.) The court may allow defendant to sign and verify his answer, where objected to, if not so signed and verified. (Holton v. Guinn, 65 Fed. Rep. 450.) The answer of a corporation to a bill of discovery should be made under its corporate seal. (Continental Nat. Bank v. Heilman, 66 Fed. Rep. 184.) The waiver of an oath to an answer merely affects the evidential character and value of the answer, and does not operate as a waiver of complainant's right to except thereto for failure to answer interrogatories. (National H. Brake Beam Co. v. Interchangeable B. Co., 83 Fed. Rep. 26.) Under the above rule, as amended, an answer under oath to a bill for injunction waiving answer under oath can be used at the hearing with the probative force of an affidavit alone. (United States v. Workingman's A. C. of New Orleans, 54 Fed. Rep. 994.)

RULE 42.

Specified interrogatories part of the bill.—The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

RULE 43.

For preceding interrogating part.—Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "to the end thereof," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct and perfect answer made to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

"1. Whether, etc.

"2. Whether, etc."

Answer to interrogatories.—Where the answer to interrogatories is evasive defendant will be ordered to make a full disclosure and to pay the costs of the

hearing. (Langdon v. Goddard, 3 Story, 13; Fed. Cas. No. 8061.)

RULE 44.

What interrogatories need not be answered.—A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

RULE 45.

Special replication.—No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

Not permissible.—A special replication is not permitted. Matter formerly so pleaded must be set up by bill or amendment (Taylor v. Benham, 5 How. 233), as matter in response to allegations in the answer. (Taylor v. Benham, 5 How. 233.) New matter must be set out by amendment to the bill. (Wilson v. Stolly, 4 McLean, 275; Fed. Cas. No. 1963; Coleman v. Martin, 6 Blatchf. 291; Fed. Cas. No. 2986.) If a special replication is filed pleading new matter, such matter will be considered surplusage at the hearing. (Duponti v. Mussy, 4 Wash. C. C. 128; Fed. Cas. No. 4185.) All amendments under this rule should be with leave of the court (Clements v. Moore, 6 Wall.

299); but if filed without leave and not objected to, objection is waived. (Clements v. Moore, 6 Wall. 299.) An amended bill or special replication is not necessary in order to avoid the effect of an amended answer, which is, at most, only a more extended statement of the grounds of defense previously set forth. (Southern Pac. Ry. Co. v. United States, 168 U. S. 1.)

RULE 46.

New or supplemental answer.—In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court, and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

RULE 47.

Proper, when not necessary parties.—In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Parties, proper, necessary and indispensable.—The general rule is that all persons interested should be made parties plaintiff or defendant, in order that a complete decree may be made (Caldwell v. Taggart, 4 Peters, 190; Morgan v. Morgan, 2 Wheat. 298; Williams v. Bankhead, 19 Wall. 563; Van Reimsdyk v. Kane, 1 Gall. 371, Fed. Cas. No. 16871), however numerous they may be. (West v. Randall, 2 Mason, 181; Fed. Cas. No. 17424.) This rule does not affect the jurisdiction, but is discretionary, and may be modified according to circumstances. (Elmendorf v. Taylor, 10 Wheat. 152.) A proper party, as distinguished from one whose presence is necessary to the determination of the controversy, is one who has an interest in the subject matter of the litigation, which may be conveniently settled therein. (Kelley v. Boettcher, U. S. App., 85 Fed. Rep. 55; Donovan v. Campion, U. S. App., 85 Fed. Rep. 71.) No person not made a party to the suit is bound by the decree. (Finley v. Bank of U. S., 11 Wheat. 304.) Nor is a decree authorized by Congress, or this court, in absence of a party whose rights may be affected by it. (Coiron v. Millaudon, 19 How. 113.) Where a person is so related to the subject matter of a suit in equity that his rights must unavoidably be passed upon by the court in reaching a final decree he is a necessary party. (Consolidated Water Co. v. Babcock, 76 Fed. Rep. 243.) Where no relief is sought against persons connected with the subject of the suit they should not be made parties defendant. (Franch v. Shoemaker, 14 Wall. 314; Fitch v. Creighton, 24 How. 159; Heath v. Erie Railway Co., 8 Blatchf. 347; Fed. Cas. No. 6306; Van Reimsdyk v. Kane, 1 Gall. 371; Fed. Cas. No. 16871.) Where parties are merely formal or only necessary parties, and are out of the jurisdiction of the court they will be dispensed with. (Abbott v. American H. R. Co., 4 Blatchf. 491; Fed. Cas. No. 9; Elmendorf v.

Taylor, 10 Wheat. 152; Mallow v. Hinde, 12 Wheat. 193; Vattier v. Hinde, 7 Peters, 252; McCoy v. Rhodes, 11 How. 131.) Where all the parties are not before the court, and some are out of the jurisdiction, if a decree can be made without prejudice to their interests, this may be done. (Cameron v. M'Roberts, 3 Wheat. 591; Harding v. Handy, 11 Wheat. 103; Gray v. Larrimore, 2 Abb. U. S. 542; Fed. Cas. No. 5721; Cole S. M. Co. v. Virginia & C. Co., 1 Sawy. 470; Fed. Cas. No. 2989; Payne v. Hook, 7 Wall. 425); to make such a decree is discretionary with the court. (Merchants' Bank v. Seton, 1 Peters, 299.) This rule specially reserves the rights of absent parties. (Calhoun v. St. Louis & Co., 14 Fed. Rep. 9; 9 Biss. 330.) The joinder or nonjoinder of merely formal parties does not oust the jurisdiction of this court. (Wormley v. Wormley, 8 Wheat. 421; Carneal v. Banks, 10 Wheat. 181; Ward v. Arredondo, 1 Paine, 410; Fed. Cas. No. 17148.) Court will dispense with joinder of those whose citizenship would oust the court if it can decide properly without them. (Harrison v. Urann, 1 Story, 64; Fed. Cas. No. 6146; Joy v. Wirtz, 1 Wash. C. C. 517; Fed. Cas. No. 7554; Drake v. Goodridge, 6 Blatchf. 151; Fed. Cas. No. 4062; Tug River Coal & Salt Co. v. Brigel, U. S. App., 86 Fed. Rep. 818; Union Mill & Min. Co. v. Dangberg, 81 Fed. Rep. 73; Sioux City Terminal R. R. v. Trust Co. of N. A., U. S. App., 82 Fed. Rep. 124; Insurance Co. of N. A. v. Svendsen, 74 Fed. Rep. 346.) Where parties are indispensable to a decree, though out of the jurisdiction, the court will not proceed without them, and will dismiss the bill. (Riddle v. Mandeville, 5 Cranch, 322; Russell v. Clark, 7 Cranch, 64; Marshall v. Beverly, 5 Wheat. 313; Connecticut v. Pennsylvania, 5 Wheat. 424; Barney v. Baltimore, 6 Wall. 280; Bank v. Carrolton R. R., 11 Wall 624; Traders' Bank v. Campbell, 14 Wall. 87; Ribon v. R. R. Co., 16 Wall. 446; Young v. Cush-

ing, 4 Biss. 456; Fed. Cas. No. 18156; Abbott v. American H. R. Co., 4 Blatchf. 491; Fed. Cas. No. 9; Bunce v. Gallagher, 5 Blatchf. 481; Fed. Cas. No. 2133; Florence S. M. Co. v. Singer S. M. Co., 8 Blatchf. 113; Fed. Cas. No. 4884; Carson v. Robertson, Chase, 475; West v. Randall, 2 Mason, 181; Fed. Cas. No. 17424; Bank v. Smith, 6 Fed. Rep. 215; Dormitzer v. Ill. etc. B. Co., 6 Fed. Rep. 217; Collins Mfg. Co. v. Ferguson & H. Trustee, 54 Fed. Rep. 721.) The want of proper parties is not, of itself, sufficient ground for dismissing bill (Milligan v. Milledge, 3 Cranch, 220; Hoxie v. Carr, 1 Sumn. 173; Fed. Cas. No. 6802); but the court will grant leave to make new parties, and if the parties cannot then be brought in the bill will be dismissed. (Hunt v. Wickliffe, 2 Peters, 201; Dandridge v. Washington's Exrs., 2 Peters, 370; Bank v. Carrolton R. R., 11 Wall. 624.) Those whose interests are in harmony should be joined as plaintiffs or defendants, as the case may be . (Bunce v. Gallagher, 5 Blatchf. 481; Fed. Cas. No. 2133; Parsons v. Lyman, 4 Blatchf. 432; Fed. Cas. No. 10779.) Where the jurisdiction of the court would be ousted by making a person party plaintiff he may be made party defendant, and equally have benefit of the suit. (Brown v. Pac. M. S. S. Co., 5 Blatchf. 526; Fed. Cas. No. 2025.) Incompetent persons should be made parties, by guardian or committee. (Harrison v. Rowan, 4 Wash. C. C. 202; Fed. Cas. No. 6143.) A jurisdiction depending on condition of parties is governed by that condition as at commencement of suit (Connolly v. Taylor, 2 Peters, 556), and is not ousted by subsequent change of condition. (Mollan v. Torrance, 9 Wheat. 537.)

RULE 48.

Parties too numerous.—Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays

in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

Parties too numerous.—The court will dispense with the necessity of bringing all parties before it, where they are too numerous or many of them unknown (Mandeville v. Riggs, 2 Peters, 482; Brown v. Pac. M. S. S. Co., 5 Blatchf. 525; Fed. Cas. No. 2025; Campbell v. R. R. Co., 1 Woods, 368; Fed. Cas. No. 2366; Wilmer v. Atlanta etc. Co., 2 Woods, 447; Fed. Cas. No. 17776), or where the question is one of general interest, and a few sue for all. (West v. Randall, 2 Mason, 181; Fed. Cas. No. 17424.) This rule specially reserves the rights of absent parties, as the decree does not bind them. (Calhoun v. St. Louis Ry. Co., 14 Fed. Rep. 9; 9 Biss. 330.)

RULE 49.

Trustees, etc., as parties.—In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, for the proceeds, or the rents and profits, in the same manner, and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and

in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

Application of rule.—It is only where the fee is actually vested in the executor or trustee that the rule applies. (Chew v. Hyman, 10 Biss. 240; 7 Fed. Rep. 7.)

RULE 50.

Heir-at-law, when a necessary party.—In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party; but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

RULE 51.

Joint debtors.—In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

RULE 52.

Defects of parties suggested in answer.—Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument

upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form or to the effect following, that is to say: "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

Defect for want of parties.—Before a bill can be dismissed for defect of parties, the objection must have been taken by demurrer, plea, or answer. (Greenleaf v. Queen, 1 Peters, 138; U. S. v. Gillespie, 6 Fed. Rep. 803.) The objection should specify names, description, and necessity of such parties. (Segee v. Thomas, 3 Blatchf. 11; Fed. Cas. No. 12633.) Where the objection is sustained the court will order all proper parties to be made. (Harrison v. Rowan, 4 Wash. C. C. 202; Fed. Cas. No. 6143.)

RULE 53.

Defect of parties suggested at hearing.—If a defendant will, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

Defect of parties at hearing.—It is generally too late to first take the objection of want of parties at the hearing (Segee v. Thomas, 3 Blatchf. 11; Fed. Cas. No. 12633), and will not avail except in extreme cases (Mechanics' Bank v. Seton, 1 Peters, 299; Story v. Livingston, 13 Peters, 359), as where the court cannot proceed to a decree without prejudice to the rights of such absent parties. (Wallace v. Holmes, 9 Blatchf. 65; Fed. Cas. No. 17100.)

NOMINAL PARTIES TO BILLS.

RULE 54.

When party need not appear.—Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

Nominal party need not appear.—This court will not suffer its jurisdiction to be ousted by the joinder of a nominal party not entitled to sue or be sued, but will make a decree without prejudice to him. (Wormley v. Wormley, 8 Wheat. 422.)

RULE 55.

Injunction, when granted as of course.—Whenever an injunction is asked for by the bill to stay

proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

Injunctions generally.—A bill to enjoin a judgment at law is not an original bill (Simms v. Guthrie, 9 Cranch, 19), and jurisdiction therefor does not depend on citizenship, unless new parties are made or new interests involved. (Dunn v. Clarke, 8 Peters, 1.) A Federal court cannot enjoin proceedings in a State court (McK m v. Voorhies, 7 Cranch, 279; Dial v. Reynolds, 96 U. S. 340; Revised Statutes, sec. 720, ante), nor can a State court enjoin a Federal court. (Diggs v. Wolcott, 4 Cranch, 179; Haines v. Carpenter, 1 Otto, 254; City Bank v. Skelton, 2 Blatchf. 26; Fed. Cas. No. 2740.) An injunction will not be granted if the rights of third persons are concerned, unless they can be made parties. (Wheeley v. Erie Ry. Co., 6 Blatchf. 271; Fed. Cas. No. 17504.) An injunction will not be granted pending a plea to the jurisdiction (Ewing v. Blight, 3 Wall. Jr. 139; Fed. Cas. No. 4590); but to prevent mischief an immediate hearing of the plea

will be ordered (Ewing v. Blight, 3 Wall. Jr. 139; Fed. Cas. No. 4590); or if this cannot be done, court will order that defendants do nothing prejudicial to plaintiff's interests pending hearing of motion for injunction. (Fanshawe v. Tracy, 4 Biss. 490; Fed. Cas. No. 4643; Fremont v. Merced Mfg. Co., 1 McAll. 268; Fed. Cas. No. 5095.) The court, on the other hand, will not allow the plaintiff to fix the time so far ahead as to embarrass defendant, but will anticipate the rule day. (Walworth v. Board of Supervisors, 5 Biss. 133; Fed. Cas. No. 17136.) A mandatory injunction will be granted only on final hearing, and then only to execute the decree. (McCauley v. Kellogg, 2 Woods, 13; Fed. Cas. No. 8688.) Notice of application for injunction is waived by appearance (Marsh v. Bennett, 5 McLean, 117; Fed. Cas. No. 9110); but no injunction can be granted except on reasonable notice. (Mowrey v. R. R. Co., 4 Biss. 78; Fed. Cas. No. 9891.) An injunction allowed in vacation expires at commencement of next term. (Gray v. Chicago etc. Co., 1 Woolw. 63; Fed. Cas. No. 5713.) A provisional injunction, granted on the filing of a bill, falls with dismissal of the bill. (Coleman v. Hudson R. R. Co., 5 Blatchf. 57; Fed. Cas. No. 2983.) Where an injunction to stay proceedings at law is granted without answer, it will not be dissolved until answer is filed (Read v. Consequa, 4 Wash. C. C. 174; Fed. Cas. No. 11606), and the motion to dissolve will be considered only on the questions raised in the answer. (Farmer v. Calvert Lith. Co., 1 Flipp. 228; Fed. Cas. No. 4651.) The dissolution of an injunction which may do irreparable injury rests in discretion of the court, either before answer or after. (Poor v. Carleton, 3 Sum. 70; Fed. Cas. No. 11272.) While a decree of the circuit court made in pursuance of the mandate of the circuit court of appeals stands, such circuit court cannot entertain a proceeding to avoid the effect of

such a decree by enjoining its enforcement. (Central Trust Co. v. Evans, 43 U. S. App. 214; 73 Fed. Rep. 562.)

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

RULE 56.

Bill of revivor, when proper.—Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Abatement and revivor.—Wherever a suit shall abate by reason of death or absence of a party or other event, a bill of revivor is necessary to reopen the proceedings (Kentucky v. Georgia St. Bk., 8 How. 586; Griswold v. Hilton, 87 Fed. Rep. 256), and the party may have it as matter of right. (Fitzpatrick v. Domingo, 4 Woods, 163; 14 Fed. Rep. 216.) It is not the commencement of a new suit, but merely the continuance of the old one. (Fitz-

patrick v. Domingo, 4 Woods, 163, 14 Fed. Rep. 216; Clarke v. Mathewson, 12 Peters, 164.) Though the original parties were citizens of different States, the suit cannot be revived where the new parties would be citizens of the same State. (Clarke v. Matthews, 2 Sum. 262; Fed. Cas. No. 2857.) Where proceedings are revived, the practice is to admit all testimony which might have been used before abatement. (Vattier v. Hinde, 7 Peters, 252. See ante. sec. 660.)

RULE 57.

Supplemental bill, when proper.—Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or, for any other reason, a supplemental bill or a bill in the nature of a supplemental bill may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by the judge of the court.

Allowance of.—The granting of leave to file a supplemental bill is discretionary with the trial court. (Sheffield & B. Coal I. & R. Co. v. Newman, 77 Fed. Rep. 787.) Matters happening after the filing of the bill should be supplied by supplemental bill (Kennedy v. Georgia St. Bk., 8 How. 610), as where there has been a change of interest pendente l'te (Hoxie v. Carr, 1 Sum. 173; Fed. Cas. No. 6802; Tappan v. Smith, 5

Biss. 73; Fed. Cas. No. 13748), or to introduce matter which accrued subsequent to filing original bill (Jenkins v. Eldredge, 3 Story, 299; Fed. Cas. No. 7267; Copen v. Flesher, 1 Bond, 440; Fed. Cas. No. 3211), or matter of which plaintiff had no information at time of filing bill. (Caster v. Wood, 1 Bald. 289; Fed. Cas. No. 2505.) But if the matter was well known to complainant prior to the filing of the original bill, the supplemental cannot be filed. (City of Omaha v. Redick, 27 U. S. App. 204; 63 Fed. Rep. 1.) But a defective original bill, which affords no ground for proceeding upon it, cannot be sustained by filing a supplemental bill, founded upon matters taking place after the filing of the original bill. (Putney v. Whitmore, 66 Fed. Rep. 385; New York Security & T. Co. v. Lincoln St. Ry. Co., 74 Fed. Rep. 67.) The averments themselves need not be embraced in the petition for leave to file them, but only the ground for so doing. (Parkhurst v. Kinsman, 2 Blatchf. 72; Fed. Cas. No. 10758.) Plaintiff will not be allowed by way of supplemental bill to file matter which will change the character of the suit. (Snead v. McCoull, 12 How. 407.) A bill denominated by the pleader a "supplemental and amended bill," but which is really an original bill in the nature of a supplemental bill, will be so treated. (Ross v. City of Fort Wayne, 58 Fed. Rep. 404.) A supplemental bill is not proper after the entry of an interlocutory decree awarding an injunction and accounting in an infringement suit. (C. & A. Potts Co. v. Creagher, 71 Fed. Rep. 574; but see Municipal Signal Co. v. Gamewell F. A. & T. Co., 77 Fed. Rep. 452.) One purchasing a contract which is the subject of a pending suit in equity may set up his interest, and obtain the benefit of proceedings already had, by obtaining leave to file an original bill in the nature of a supplemental bill. (Hazleton Tripod B. Co. v. Citizen's St. Ry. Co., 72 Fed. Rep. 325.)

The above rule is to be construed as applying to the case of a transfer of the cause of action by a voluntary deed or contract, as well as by operation of law. (Hazleton Tripod-Boiler Co. v. Citizen's St. R. Co., 72 Fed. Rep. 325.)

RULE 58.

What need not be set forth.—It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

RULE 59.

Verification, before whom.—Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory, or before any notary public.

Amendment promulgated March 5, 1889, 129 U. S. 701.

Answer from beyond the sea.—An answer in chancery from beyond the sea must be taken by a commissioner under a dedimus issued by this court. (Read v. Consequa, 4 Wash. C. C. 335; Fed. Cas. No. 11607; Herman v. Herman, 4 Wash. C. C. 555; Fed. Cas. No. 6407.)

AMENDMENT OF ANSWERS.

RULE 60.

Wherein amendable.—After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank or correcting a date, or reference to a document or other small matter, and be resworn at any time before a replication is put in or the cause is set down for a hearing upon bill and answer. But after replication or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements except by special leave of the court or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court or the judge granting the same may in his discretion require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

When allowed.—The allowance of amendments to answers is in the discretion of the court (Caster v. Wood, 1 Bald. 289; Fed. Cas. No. 2505; Ritchie v. McMullen. U. S. App. : 79 Fed. Rep. 522), even after a master's report has been filed and the cause heard on exceptions thereto (Hudson v. Randolph, 23 U. S. App. 216; 66 Fed. Rep. 216), and that discretion will be exercised to forward justice and restrain gross and inexcusable neglect. (Calloway v. Dobson, 1 Brock. 119; Fed. Cas. No. 2325.) In certain cases amendments are allowed at any stage of the proceedings

(Rhode Island v. Massachusetts, 13 Peters, 23), such as mistakes of dates, matters of form, and verbal inaccuracies. (Smith v. Babcock, 3 Sum. 583; Fed. Cas. No. 13008.) Amendments which change the character of the answer will rarely be admitted after hearing. (Waldon v. Bradley, 14 Peters, 156.) Where the proposed amendment could with diligence have been sooner introduced, it will not be allowed (India Rub. Co. v. Phelps, 8 Blatchf. 85; Fed. Cas. No. 7025), but where omitted through mistake it will usually be allowed. (Suydam v. Truesdale, 6 McLean, 459; Fed. Cas. No. 13656.) If the amendment contain the same matter and defense as the original answer it is impertinent. (Grier v. Gregg, 4 McLean, 202; Fed. Cas. No. 5406.) After the cause has been prepared for trial, hearing had, and the issues fully submitted, the discretion of the court is not so easily moved to allow amendments in material matters as in the earlier stages when the issues are in a formative condition. (Gibbons v. Laughtenschlager, 75 Fed. Rep. 615.)

EXCEPTIONS TO ANSWERS.

RULE 61.

When to be taken.—After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a judge thereof; and if no exceptions shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Exceptions for impertinence and insufficiency.—An exception that allegations which support the

equity of the bill are neither answered, admitted, or denied, is good, and will be sustained. (Hardeman v. Harris, 7 How. 726; Read v. Consequa, 4 Wash. C. C. 335; Fed. Cas. No. 11607.) A denial on information and belief of any of the facts in the bill, is a good ground of exception. (Bradford v. Geiss, 4 Wash. C. C. 513; Fed. Cas. No. 1768.) An exception for impertinence is only allowed where apparent that the matter is not material or relevant. (Chapman v. School District, Deady, 108; Fed. Cas. No. 2607.) Exceptions will lie to an answer for insufficiency or impertinence, even though answer under oath is expressly waived. (Whittemore v. Patent, 81 Fed. Rep. 527.) If after calling impertinent matter, the answer is insufficient, an exception taken therefor may be allowed. (Patriotic Bank v. Washington Bank, 5 Cranch C. C. 602; Fed. Cas. No. 10806.) An exception for insufficiency should state the charges in the bill, and answer thereto, verbatim, that the court may properly judge it. (Brooks v. Byam, 1 Story, 296; Fed. Cas. No. 1947.) The answer, when excepted to, will be liberally construed, having regard to the case made by the bill. (Griswold v. Hill, 1 Paine, 390; Fed. Cas. No. 5835.) An exception to the answer is waived by going to trial on the merits. (Kitredge v. Race, 92 U. S. 116.) A motion to strike out parts of the answer must be denied when not sufficiently specific to identify the portions to be stricken. (McGorray v. O'Connor, U. S. App., 87 Fed. Rep. 586.) Exceptions taken to an answer may be amended by adding a prayer. (Whittemore v. Patten, 84 Fed. Rep. 51.) It is settled that, under the above rule, an allegation in the bill not noticed in the answer is to be proven by the complainant, in the absence of exceptions. (Lovell v. Johnson, 82 Fed. Rep. 206.) It is no ground of exception to an answer that it is not entitled in the case so as to agree with the names of

the parties as they appear in the bill, or that being the answer of a corporation it is not sworn to by any officer or representative thereof. The proper remedy in such case is to move to strike the answer from the files. (Osgood v. A. S. Aloe Instrument Co., 69 Fed. Rep. 291.) A demurrer to an answer is unknown in the equity practice of the Federal courts, where, however, a demurrer is, in fact, filed to the answer and no objection is made thereto, the court may treat the demurrer as an application to set down the cause upon bill and answer. (Grether v. Wright, 43 U. S. App. 770; 75 Fed. Rep. 742.) Where a plea in bar is supported by answer complainant cannot properly except to the answer for insufficiency, and at the same time move to quash the plea; and if he does so he must be held to have admitted the plea. (Hatch v. Bancroft Thompson Co., 67 Fed. Rep. 802.) No such practice as dismissal by an order as of course seems to be known in the Federal courts, except under the above rule. (Gregory v. Pike, 21 U. S. App. 658; 67 Fed. Rep. 837.) An exception should state the charges in the bill, to which the answer excepted to is addressed. (Schultz v. Phoenix Ins. Co., 77 Fed. Rep. 375.)

RULE 62.

Separate answers, costs on.—When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

RULE 63.

When to be set down for hearing.—Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; *provided, however,* that the court, or any judge thereof, may for good cause shown enlarge the time for filing exceptions or for answering the same, in his discretion, upon such terms as he may deem reasonable.

Exceptions, setting down for hearing.—Exceptions should be set down for hearing on a rule day before the judge. (La Vega v. Lapsley, 1 Woods, 428; Fed. Cas. No. 8123.) A reference before that time or to a master is a nullity and abandonment of the exception. (La Vega v. Lapsley, 1 Woods, 428; Fed. Cas. No. 8123.) Plaintiff may withdraw his exception and rejoin forthwith. (Penn v. Butler, Wall. C. C. 4; Fed. Cas. No. 10931.) Where a cause is set down for hearing, on bill and answer no replication having been filed then the answer is to be taken as true in all its material allegations, whether responsive or not. (Lake Erie & W. R. Co. v. Indianapolis Nat. Bank, 65 Fed. Rep. 690.)

RULE 64.

Answer on allowance of exceptions.—If at the hearing the exceptions shall be allowed the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant when he is in custody upon such writ shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

RULE 65.

Exceptions overruled, costs.—If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

RULE 66.

When to be filed.—Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall

file the general replication thereto on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

Replication, when allowed, etc.—The answer of every defendant must be replied to without reference to the state of the cause or of the pleadings in regard to any other defendant. (Coleman v. Martin, 6 Blatchf. 291; Fed. Cas. No. 2986.) Though a replication should be filed before cause is set down the court may allow plaintiff to file it afterward. (Coleman v. Martin, 6 Blatchf. 291; Fed. Cas. No. 2986.) But it is too late after hearing to apply for leave to file it. (Bullinger v. Mackey, 14 Blatchf. 355; Fed. Cas. No. 2126; Fischer v. Wilson, 16 Blatchf. 220; Fed. Cas. No. 4812.) And the court will proceed to try the case on its merits, or allow one to be filed instanter when not on file at time of hearing. (Jones v. Brittan, 1 Woods, 667; Fed. Cas. No. 7455.) Where replication is not filed, the order dismissing the bill is of course (Robinson v. Satterlee, 3 Sawy. 134; Fed. Cas. No. 11967); but the judge may allow the replication to be filed nunc pro tunc, and impose such terms as may be proper. (Washington R. R. v. Bradleys, 10 Wall. 302; Fischer v. Hayes, 19 Blatch. 26; S. C. 6

Fed. Rep. 76.) If filed without leave, after time prescribed, the court may allow the replication to stand. (Fischer v. Hayes, 19 Blatchf. 26; 6 Fed. Rep. 76.) The objection that proper replication has not been filed cannot be taken for the first time in the supreme court. (Clements v. Moore, 6 Wall. 299.) A direct departure in the replication from the statements of the bill will not be permitted. (Vattier v. Hinde, 7 Pet. 252.) Special replications are disused and new matter must be introduced by supplemental bill. (Duponti v. Mussy, 4 Wash. C. C. 128; Fed. Cas. No. 4185); if introduced, it will be treated as surplusage. (Duponti v. Mussy, 4 Wash. C. C. 128; Fed. Cas. No. 4185; Warren v. Van Brunt, 19 Wall. 646.) When a motion to strike the answer from the files is pending, the suit will not be dismissed for want of replication. (Allis v. Stowell, 10 Biss. 57; S. C. 5 Fed. Rep. 203.)

TESTIMONY—HOW TAKEN.

RULE 67.

Commissions, when taken out.—After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*.

Who to name commissioners.—In all cases the commissioner or commissioners may be named by

the court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

Notice required.—Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court. The examiner, if he so request, shall be furnished with a copy of the pleadings. Such examination shall take place in the presence of the parties or their agents by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common-law courts. The depositions taken upon such oral examination shall be reduced to writing by the examiner in the form of question put and answer given; *provided*, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative. At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skillful stenographer or by a skillful typewriter, as the examiner may elect, and when taken stenographically shall be put into typewriting or other writing; *provided*, that such stenog-

rapher or typewriter has been appointed by the court, or is approved by both parties. The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; *provided,* that if the witness shall refuse to sign his deposition so taken, then the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal. The examiner may upon all examinations state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent. immaterial, or irrelevant depositions or parts of them, as may be just.

Amendment promulgated October term, 1890, 139 U. S.

Compulsory attendance of witnesses.—In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

In re Allis, 44 Fed. Rep. 216; Hake v. Brown, 44 Fed. Rep. 734.

Notice of time and place.—Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

The taking of evidence by referees without notice of the time or place to the parties vitiates the award or findings. (City of New York v. Du Bois, 86 Fed. Rep. 889.)

Transmission of deposition.—When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in section 865 of the revised statutes.

A commission duly issued and executed will not be suppressed because when received by the clerk the envelope was open at one end as if worn by the mail. (Eiffert v. Craps, 44 Fed. Rep. 164.)

Testimony, how taken.—Testimony may be taken on commission in the usual way by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

Court may assign the time.—Where the evidence to be adduced in a cause is to be taken orally, as before provided, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the

bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, or motion for cause shown.

Amendments promulgated December term, 1854, 17 How. vii; December term, 1861; 1 Black, vi; December term, 1869, 9 Wall. vii. See Revised Statutes, 1865.

Expense of taking depositions.—The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

Promulgated May 2, 1892.

Taking testimony in open court.—Upon due notice given, as prescribed by previous order, the court may at its discretion permit the whole or any specific part of the evidence to be adduced orally in open court, on final hearing.

Amendment promulgated May 15, 1893, 149 U. S. 793.

Taking of testimony.—Any defendant whose answer is sufficient has a right to have the case as to him put at issue, and to proceed to take his testimony. (Coleman v. Martin, 6 Blatchf. 291; Fed. Cas. No.

2986.) The party may examine and cross-examine witnesses orally in open court (Sickles v. Gloucester Co., 3 Wall. Jr. 186; Fed. Cas. No. 12840; Van Hook v. Pendleton, 2 Blatchf. 85; Fed. Cas. No. 16852), or may take his testimony by commission. (Bronson v. La Crosse R. R. Co., 9 Am. Law R. 350; Fed. Cas. No. 1930; Bischoffscheim v. Baltzen, 10 Fed. Rep. 1; 20 Blatchf. 229.) The power still resides in the court to take testimony of witnesses in open court (In re Clarke, 9 Blatchf. 372; Fed. Cas. No. 2801), the passage of this rule merely providing that commissions may be taken. (Sickles v. Gloucester Co., 3 Wall. Jr. 192; Fed. Cas. No. 12840.) The court is authorized to appoint examiners to take testimony out of its territorial jurisdiction. (White v. Toledo St. L. & K. C. R. R. Co., U. S. App., 79 Fed. Rep. 133; N. C. R. R. Co. v. Drew, 3 Woods, 692; Fed. Cas. No. 17434.) And a master may take testimony in a cause referred to him out of the district of his appointment. (Consol. Fastener Co. v. Columbian B. & F. Co., 85 Fed. Rep. 54.) And a witness may be compelled to testify before such master or examiner. (In re Spofford, 62 Fed. Rep. 443.) The motion for appointment of commissioners to take testimony abroad is not grantable of course. (U. S. v. Parrott, 1 McAll. 447; Fed. Cas. No. 15999.) The authority of commissioners is special and must be strictly pursued (Armstrong v. Brown, 1 Wash. C. C. 43; Fed. Cas. No. 542; Munns v. Dupont, 3 Wash. C. C. 31; Fed. Cas. No. 9926; Willings v. Consequa, 1 Peters, C. C. 301; Fed. Cas. No. 17767; Lonsdale v. Brown, 3 Wash. C. C. 404; Fed. Cas. No. 8492), and the commission must be executed in the place directed and none other. (Boudereau v. Montgomery, 4 Wash. C. C. 186; Fed. Cas. No. 1694; Rhoades v. Selin, 4 Wash. C. C. 715; Fed. Cas. No. 11740.) Depositions taken under commission cannot

be read, unless proof is made that notice of rule therefor was properly served. (Rhoades v. Selin, 4 Wash. C. C. 715; Fed. Cas. No. 11740.) A deposition taken to be read in case of inability of witness to attend can only be read on proving such inability. (Read v. Bertrand, 4 Wash. C. C. 558; Fed. Cas. No. 11603.) Where parties cannot agree on interrogatories, they should be referred for settlement to a master subject to a review of the court before commission issues. (Crocker v. Franklin Co., 1 Story, 169; Fed. Cas. No. 2930.) Each interrogatory should be separately answered, and the omission of such answer is fatal to the whole commission. (Ketland v. Bissett, 1 Wash. C. C. 144; Fed. Cas. No. 7742.) All interrogatories must be substantially answered (Dodge v. Israel, 4 Wash. C. C. 323; Fed. Cas. No. 3952); and if the general interrogatory is not answered, it is fatal to the deposition. (Richardson v. Golden, 3 Wash. C. C. 109; Fed. Cas. No. 11782; Rhoades v. Selin, 4 Wash. C. C. 715; Fed. Cas. No. 11740.) If the interrogatories are hypothetical, or to be asked in a certain event which does not happen, or refer to records which speak for themselves, they need not be answered. (Bell v. Davidson, 3 Wash. C. C. 328; Fed. Cas. No. 1248.) It is no objection that a material part of evidence comes in response to the general interrogatory. (Rhoades v. Selin, 4 Wash. C. C. 715; Fed. Cas. No. 11740.) A deposition in which only the direct interrogatories were put is fatally defective (Gilpins v. Consequa, 3 Wash. C. C. 184; Fed. Cas. No. 5452); but if no cross-interrogatories were filed, the deposition, taken on the direct questions, may be admitted. (Gass v. Stinson, 3 Sum. 98; Fed. Cas. No. 5262.) It is no objection that direct and cross-interrogatories were answered at different times. (Gilpins v. Consequa, 3 Wash. C. C. 184; Fed. Cas. No. 5452.) The examiner is not compelled to

file proofs taken until his fees are paid. (Frese v. Biedenfeld, 14 Blatchf. 402; Fed. Cas. No. 5111.) Where testimony is taken on commission the court will not, at the hearing, receive viva voce testimony except to prove an exhibit. (De Butts v. Bacon, 1 Cranch C. C. 569; Fed. Cas. No. 3717.)

RULE 68.

Testimony by deposition after issue.—Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

Revised Statutes, §§ 863-875.

RULE 69.

Time allowed.—Three months and no more shall be allowed for the taking of testimony after the cause is at issue, unless the court or a judge thereof shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court upon due notice to the

parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But by consent of the parties publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order books or indorsed upon the deposition or testimony.

Amended December term, 1869, 9 Wall. vii.

Time allowed for taking testimony.—For the purposes of this rule the cause is not at issue until it is so as to all defendants, or to one or more and confessed as to the rest (Gilbert v. Van Arman, 1 Flipp. 421; Fed. Cas. No. 5414), and unless so at issue the court will enlarge the time so that plaintiff may take proofs in respect to all defendants who plead. (Coleman v. Martin, 6 Blatchf. 291; Fed. Cas. No. 2986.) The three months allowed is for taking testimony of both plaintiff and defendant. (Ingle v. Jones, 9 Wall. 486.) Usually after publication of testimony no new witness can be examined or new evidence taken (Wood v. Mann, 2 Sum. 316; Fed. Cas. No. 17953), except in special cases on good cause shown, as surprise, accident, or fraud. (Wood v. Mann, 2 Sum. 316; Fed. Cas. No. 17953.) A case may be dismissed if testimony has not been taken in time, though the complainant died and his administratrix obtained an order of revivor. (Mackaye v. Mallory, 80 Fed. Rep. 256.) Exhibits may be proven after publication, and even at the hearing. (De Butts v. Bacon, 1 Cranch C. C. 569; Fed. Cas. No. 3717.) So also may the credibility of witnesses whose depositions are before the court be proven by witnesses at the hearing. (Gass v. Stinson, 2 Sum. 605; Fed. Cas. No. 5261; Wood v. Mann, 2 Sum. 316; Fed. Cas. No. 17953.) Proofs not in proper time may be filed nunc pro tunc

in the discretion of the court. (Fischer v. Hayes, 19 Blatchf. 25; S. C. 6 Fed. Rep. 76.) This rule applies as much to defendant as to complainants; and the allowance of further time is largely in the discretion of the court. (Ingle v. Jones, 9 Wall. 486.) Depositions not taken within the time prescribed by the above rule cannot be read in evidence when timely objection is made. (Western Electric Co. v. Capital Telep. & Teleg. Co., 86 Fed. Rep. 769.) But the rule has no application to a reference, ordered by the court, to a master to take testimony as to the damages on an injunction bond. (Coosaw Min. Co. v. Farmers' Min. Co., 67 Fed. Rep. 31.)

TESTIMONY DE BENE ESSE.

RULE 70.

When may be taken—Notice.—After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners, as the judge of the court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

Party as witness.—This rule does not apply to the case of a party propounding himself as a witness. (Eslava v. Mazauge's Admr., 1 Woods, 624; Fed. Cas. No. 4527.)

FORM OF THE LAST INTERROGATORY.

RULE 71.

Written interrogatories.—The last interrogatory in the written interrogatories to take testimony, now commonly in use, shall in the future be altered, and stated in substance, thus: "Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

General interrogatory.—In answer to this question, any further knowledge witness may have material to the cause is admissible. (Rhoades v. Selin, 4 Wash. C. C. 715; Fed. Cas. No. 11740.) If there is no answer whatever to this interrogatory, the deposition is fatally defective. (Richardson v. Golden, 3 Wash. C. C. 109; Fed. Cas. No. 11782; Dodge v. Israel, 4 Wash. C. C. 323; Fed. Cas. No. 3952.)

CROSS-BILL.

RULE 72.

Defendant to answer original bill.—Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the

hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

Cross-bill, allowance of.—The filing of a cross-bill without leave is irregular and it may be set aside. (Bronson v. La Crosse R. R. Co., 2 Wall. 283.) A cross-bill is a mere auxiliary suit and must touch matters in question in the original bill. (Cross v. De Valle, 1 Wall. 1.) The office of a cross-bill is either to warrant the grant of affirmative relief to the defendant in the original suit to obtain a discovery in aid of the defense in that suit, to enable the defendant to interpose a more complete defense than that which he could present by answer, or to obtain full relief to all the parties. (Springfield M. Co. v. Barnard & L. Mfg. Co., 81 Fed. Rep. 261.) If it concern matter different from original bill, it is not a cross-bill. (Rubber Co. v. Goodyear, 9 Wall. 807; Heath v. Erie Ry. Co., 9 Blatchf. 316; Fed. Cas. No. 6307; Forbes v. R. R. Co., 2 Woods, 323; Fed. Cas. No. 4926.) Matter cannot be litigated between defendants, by way of a cross-bill, which is foreign to the original bill (Putnam v. New Albany, 4 Biss. 365; Fed. Cas. No. 11481; Thurston v. Big Stone Gap Imp. Co., 86 Fed. Rep. 484; Goff v. Kelly, 74 Fed. Rep. 327; Springfield Milling Co. v. Barnard & Leas Mfg. Co., 81 Fed. Rep. 261), nor can cross-bill be used for setting any controversy between defendants, unless necessary to a complete decree on original bill. (Weaver v. Alter, 3 Woods, 152; Fed. Cas. No. 17308.) New parties cannot be brought into a cross-bill. (Sheils v. Barrow, 17 How. 130.) A cross-bill may be used to discover whether a party is the real or merely nominal plaintiff (Young v. Pott, 4 Wash. C. C. 521; Fed. Cas. No. 18172), or to establish a conveyance which original bill seeks to set aside. (Carnochan v.

Christie, 11 Wheat. 446.) Where the court has jurisdiction it is no valid objection on a cross-bill that parties are citizens of the same State (Peay v. Schenck, 1 Woolw. 175; Fed. Cas. No. 12450), nor can the objection be taken that a State court had acquired prior jurisdiction. (Brandon etc. Mfg. Co. v. Prime, 14 Blatchf. 371; Fed. Cas. No. 1810.) The original cause will not be heard until cross-bill is answered. (Young v. Pott, 4 Wash. C. C. 521; Fed. Cas. No. 18172.) Where the cross-bill and answers are filed, a decree disposing of the whole case should settle the issues raised in them. (Moore v. Huntington, 17 Wall. 417.) If after filing cross-bill plaintiff dismiss original bill, defendant is entitled to decree pro confesso on the cross-bill. (Lowenstein v. Glidewell, 5 Dill. 325; Fed. Cas. No. 8575.) A cross-bill may be filed only by a party to a suit. (Thurston v. Big Stone Gap Imp. Co., 86 Fed. Rep. 484.) When a cross-bill seeks affirmative relief with respect to matters germane to the original suit, and the controversy takes such a shape that a complete and final determination of the whole case may be had upon the lines of the cross-bill, a final decree may be entered on the cross-bill. (Blythe v. Hinckley, 84 Fed. Rep. 228.) A cross-bill seeking no discovery and setting up no defense which might not as well have been taken by answer, will be dismissed. (American & Gen. Mortg. Co. v. Marquam, 62 Fed. Rep. 960.) A cross-bill is auxiliary to the original proceeding and can be sustained only on matters growing out of the bill and embraced in it. Unless the cross-bill seeks either discovery or complete relief as to the subject matter of the bill, it becomes itself an original bill. (Fidelity T. & S. V. Co. v. Mobile St. Ry. Co., 53 Fed. Rep. 850; Stuart v. Hayden, 36 U. S. App. 462; 72 Fed. Rep. 402.) For a bill filed as a cross-bill, but which is in fact an original bill, see Chattanooga Medicine Co. v. Thedford,

58 Fed. Rep. 347. Equity has no power, merely upon an answer, and in the absence of a cross-bill, to make a decree granting affirmative relief to the defendant. (Hill v. Ryan Grocery Co., 78 Fed. Rep. 21.)

REFERENCE TO, AND PROCEEDINGS BEFORE, MASTERS.

RULE 73.

Account of personal estate.—Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

Account, how taken.—Where an account is necessary, the court usually ascertains the amounts by reference to a master. (Kelsey v. Hobby, 16 Peters, 269.) This is usually necessary where a bill is taken pro confesso. (Pendleton v. Evans' Exrs., 4 Wash. C. C. 391; Fed. Cas. No. 10921.) In cases of infringement, reference is usually ordered to ascertain loss and profits. (Allen v. Blunt, 1 Blatchf. 480; Fed. Cas. No. 215.) A complex and intricate account is an unfit subject for examination in a court, and should be referred to a master. (St. Colombe v. U. S., 7 Peters, 625.) The court may itself ascertain the facts if enabled by the evidence to do so, and it will not then order a reference (Field v. Holland, 6 Cranch, 8; Lawrence v. Dana, 4 Cliff. 6; Fed. Cas. No. 8136), unless both parties desire a reference and acquiesce in the delay and expense thereof. (Jewett v. Cunard, 3 Wood. & M. 277; Fed. Cas. No. 7310.) Where a bill seeks both discovery and an accounting, the discovery must be regarded, prima facie, as incidental to

the accounting, and if there is no accounting, the bill will be held bad upon demurrer. (Everson v. Equitable Life Assur. Soc., 39 U. S. App. 34; 71 Fed. Rep. 570.) A court may in its discretion state the account itself, after an examination of the testimony taken by the master. (Wheeler v. Billings, 36 U. S. App. 419; 72 Fed. Rep. 301.) When a cause is referred to a master for an accounting, his action in passing upon questions of procedure arising before him is subject to review only when he has completed his labors and filed his report. (Hoe v. Scott, 87 Fed. Rep. 220.)

RULE 74.

Reference, when to be laid before master.—Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance and for whose benefit the reference is made shall cause the same to be presented to the master for a hearing on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

RULE 75.

Duty of master.—Upon every such reference it shall be the duty of the master, as soon as he reasonably can, after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed

ex parte, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reasons for any delay.

RULE 76.

Report, what need not contain.—In the reports made by the master to the court no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination or answer were so brought in or used.

RULE 77.

Proceedings before master.—The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other

documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

Proceedings before master.—The master is at liberty to examine any witness either on interrogatories or viva voce, or both (Foote v. Silsby, 3 Blatchf. 507; Fed. Cas. No. 4920), and for the same reason that a court may do so. (Story v. Livingston, 13 Peters, 359.) The master's conduct and report will be regarded as correct in the matters, unless specially excepted to. (Harding v. Handy, 11 Wheat. 103; Story v. Livingston, 13 Peters, 359.) After the parties have by stipulation agreed to refer the cause to a master, and the court has entered a decree of reference, plaintiff cannot dismiss the cause without prejudice. (American Bell T. Co. v. Western Union T. Co., 21 U. S. App. 627; 69 Fed. Rep. 666.) Reference to a master to ascertain an amount due is discretionary with the court, and the determination of the amount without such reference is not error. (Brown v. Grove, 80 Fed. Rep. 564.) A master to whom a cause is referred has jurisdiction in his discretion, and for the convenience of the parties, to take testimony outside of the district of his appointment. (Consol. Fastener Co. v. Columbian B. & F. Co., 85 Fed. Rep. 54.)

RULE 78.

Witnesses, how summoned.—Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or to give evidence, it shall be deemed a contempt of the court, which, being certified to the clerk's office by the commissioner, master or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

Witness, examination, before master or in court.—A refusal to produce books or papers on master's order is a contempt and punishable as such. (Erie Ry. Co. v. Heath, 8 Blatchf. 413; Fed. Cas. No. 4513.) This rule does not change the practice, and generally oral examination on the trial will not be admitted. (R. R. Co. v. Drew, 3 Woods, 692; Fed. Cas. No. 17434.) But witnesses may be examined in open court in discretion of judge. (In re Clarke, 9 Blatchf.

372; Fed. Cas. No. 2801.) Usually witnesses are heard in court as to credibility of other witnesses and their depositions, or to verify exhibits. (R. R. Co. v. Drew, 3 Woods, 692; Fed. Cas. No. 17434.) A witness who has given his deposition cannot be examined anew without special order of court. (Gass v. Stinson, 2 Sum. 605; Fed. Cas. No. 5261.) Where leave is thus granted, witness can only be re-examined as to facts not already testified to by him. (Jenkins v. Eldridge, 3 Story, 299; Fed. Cas. No. 7267.)

RULE 79.

Accounts, production and examination of party.—All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party, *viva voce,* or upon interrogatories in the master's office, or by deposition, as the master shall direct.

RULE 80.

Affidavits, what used.—All affidavits, depositions, and documents which have been previously made, read or used in the court, upon any proceeding in any cause or matter, may be used before the master.

RULE 81.

Examination of creditor or claimant.—The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce,*

or on both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

See Story v. Livingston, 13 Peters, 359.

RULE 82.

Appointment of masters, compensation.—The circuit courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof, including the justice of the supreme court, the circuit judges, and the district judge for the district concurring in the appointment) and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if upon notice thereof he does not pay it within the time prescribed by the court.

Rule as amended April 16, 1894, 152 U. S. 709.

Master, appointment and compensation of.—The appointment both of standing and special masters is left wholly with the circuit courts in their discretion. (Van Hook v. Pendleton, 2 Blatchf. 85; Fed. Cas. No. 16852.) An order appointing a standing master is impervious to collateral attack on the ground that he is ineligible because he was a clerk of the court or son of one of the judges. That question can only be raised by a direct proceeding. (Seaman v. Northwestern Mut. Life Ins. Co., U. S. App.; 86 Fed. Rep. 493; Elgutter v. Northwestern Mut. Life Ins. Co., U. S. App.; 86 Fed. Rep. 500.) It is not requisite to the validity of the appointment of a standing master that the order of appointment be recorded in any book of the court, or that the master give a bond. (Seaman v. Northwestern Mut. Life Ins. Co., U. S. App.; 86 Fed. Rep. 493.) A master being an officer of the court, should be appointed by the court. (Finance Committee v. Warren, 82 Fed. Rep. 525.) Clerks and deputy clerks shall not be appointed masters, except on special grounds to be assigned in the order of appointment. (Acts of Congress, 1879, ch. 183, p. 415.) A master must file his report whether his fees are paid or not, but attachment will issue therefor if not paid (Frese v. Biedenfeld, 14 Blatchf. 402; Fed. Cas. No. 5111), and the issuance of this attachment is not stayed by proceedings for an appeal. (Myers v. Dunbar, 12 Blatchf. 380; Fed. Cas. No. 9990.) Each party should on the first instance pay his own costs, leaving the question of their final disposition to be determined when the decree is entered. (United States Printing Co. v. American Playing Card Co., 81 Fed. Rep. 506; Brickill v. Mayor of New York, 55 Fed. Rep. 565.) A master's fee on adjournment of a hearing should be paid by the party asking the adjournment, and it is the better practice to pay such fee when the adjournment

is had. (Brickill v. Mayor of New York, 55 Fed. Rep. 565.) The compensation of a master in chancery should be measured by the amount of work done, the time employed, and the responsibility assumed, having also in view the magnitude of the interest involved. (Finance Committee v. Warren, U. S. App.; 82 Fed. Rep. 525.)

EXCEPTIONS TO REPORT OF MASTER.

RULE 83.

When may be taken.—The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

Report of master.—If the report of the master is erroneous in any particular, it is within the discretion of the court to correct the error. (Sheffield & B. C. I. & R. Co. v. Gordon, 151 U. S. 285.) A creditor's bill does not require a finding by the master of the value of the goodwill of a business. (Lilienthal v. Drucklieb, 84 Fed. Rep. 918.) The master's findings, when concurred in by the court should usually be allowed to stand. (Tug River C. & S. Co. v. Brigel, U. S. App.; 86 Fed. Rep. 818; Warren v. Keep, 155 U. S. 265; Furrier v. Ferris, 145 U. S. 132; Craw-

ford v. Neal, 144 U. S. 585.) In the absence of evidence of bias or clear mistake, the court will accept the report of the master. (Walters v. Western & A. R. Co., 69 Fed. Rep. 706; Clyde v. Richmond & D. R. Co., 69 Fed. Rep. 673; Stuart v. Hayden, 36 U. S. App. 462; 72 Fed. Rep. 402; Third Nat. Bank v. Nat. Bank of Chester Valley, U. S. App; 86 Fed. Rep. 852; Central Trust Co. v. East Tenn. Land Co., 79 Fed. Rep. 19; Girard Ins. & T. Co. v. Cooper, 162 U. S. 529; Camden v. Stuart, 144 U. S. 104; Walker v. Kinnare, 46 U. S. App. 150; 76 Fed. Rep. 101; Farrar v. Bernheim, 41 U. S. App. 172; 75 Fed. Rep. 136.)

Exceptions to master's report.—The parties may except to the master's report, and thus bring any matter decided by him before the court for review (St. Colombe v. U. S., 7 Peters, 625); but such matter will not be set aside unless some abuse of power or clear abuse is shown. (Mason v. Crosby, 3 Wood. & M. 258; Fed. Cas. No. 9236.) On exception to master's report a general assignment of errors is insufficient. (Dexter v. Arnold, 2 Sum. 108; Fed. Cas. No. 3858.) The exceptions are in the nature of a demurrer, and the court will only regard errors specifically pointed out (Story v. Livingston, 13 Peters, 359; Green v. Bishop, 1 Cliff. 186; Fed. Cas. No. 5763; Foster v. Goddard, 1 Black, 506; Chappedelaine v. Dechenaux, 4 Cranch, 306; Turrill v. R. R. Co., 5 Biss. 345; Fed. Cas. No. 14272; Sheffield & B. C. I. & R. Co. v. Gordon, 151 U. S. 285), and supported by the special statement of the master. (Harding v. Handy, 11 Wheat. 104; Farrar v. Bernheim, 41 U. S. App. 172; 75 Fed. Rep. 136.) The exceptions should be precise and raise well-defined issues. (Stanton v. R. R. Co., 2 Woods, 507; Fed. Cas. No. 13296.) Master's report will not be corrected because the immaterial evidence was wrongly admitted. (Garretson v. Clark, 15 Blatchf. 70; Fed.

Cas. No. 5248.) The exceptions need not be formally allowed or disallowed on the record, but the master's report will be reformed accordingly. (Oliver v. Platt, 3 How. 334.) No objection to master's report can be urged which was not taken at the time and before the master. (McMicken v. Perin, 18 How. 507; Troy etc. Co. v. Corning, 6 Blatchf. 328; Fed. Cas. No. 14196; Gay Mfg. Co. v. Camp, 25 U. S. App. 376; 68 Fed. Rep. 67; Gaines v. New Orleans, 1 Woods, 104; Fed. Cas. No. 5177; Cowdery v. R. R. Co., 1 Woods, 331; Fed. Cas. No. 3293.) After the filing of a special master's report, and the taking of exceptions thereto, the court will not allow the cause to be reopened to permit the taking of additional evidence. (Central Trust Co. v. Georgia Pac. Ry. Co., 83 Fed. Rep. 386.) Exceptions to the report of a master are necessary to justify the court in disturbing the findings. (Farrar v. Bernheim, 41 U. S. App. 172; 74 Fed. Rep. 435.) On exceptions to the report of a master the court will not verify each interest calculation. (Chandler v. Pomeroy, 87 Fed. Rep. 262.) Where a reference to a master has been made upon a motion of one of the parties and not by agreement of both, the court must determine on exceptions to the report by its own judgment, the controversy presented. (Bosworth v. Hook, 46 U. S. App. 598; 77 Fed. Rep. 686.) Where a reference is made by consent, findings can only be avoided upon exceptions showing that the report is unsupported or essentially defective. (Farrar v. Bernheim, 41 U. S. App. 172; 75 Fed. Rep. 136.) The above rule has no reference to a report by a master of a sale, but the sale will be confirmed upon application, unless cause is shown against it within eight days after service of the order. (Pewabic Min. Co. v. Mason, 145 U. S. 349.) In the absence of exceptions to the master's report, there can be no inquiry into the correctness of the facts found, but his mis-

apprehension of the legal consequences of the facts reported is open to correction. (Burke v. Davis, U. S. App.; 81 Fed. Rep. 907.)

RULE 84.

Costs and exceptions.—And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs, the costs to be fixed in each case by the court by a standing rule of the circuit court.

Costs, what are.—A solicitor's fee is not a cost within the meaning of this rule. (Garretson v. Clark, 17 Blatchf. 256; Fed. Cas. No. 5249.)

DECREES.

RULE 85.

Correction of clerical mistakes.—Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

Enrollment of.—All decrees are deemed to be enrolled as of term in which they are made. (Dexter v. Arnold, 5 Mason, 303; Fed. Cas. No. 3856; Whiting v. U. S. Bank, 13 Peters, 6.) Though a court of equity has power to correct clerical errors in its decrees at any time, it will not interfere to correct what may have been a judicial error; and it will not correct a

clerical error in a decree, entered two years before the application for correction, by a judge other than the one to whom such application is made, and which decree was subsequently affirmed on appeal. (Hicklin v. Marco, 64 Fed. Rep. 609.)

RULE 86.

Not to contain pleadings.—In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz." [Here insert the decree or order.]

Form of decree.—The decree should not recite pleadings or ordinary facts of case (Whiting v. U. S. Bank, 13 Peters, 16); but the court may occasionally state in the decree conclusions of fact as well as of law. (Putnam v. Day, 22 Wall. 60.) There should be first an interlocutory order and when the amounts and the like have been ascertained, the final decree should be entered. (Forgay v. Conrad, 6 How. 201; R. R. Co. v. Swasey, 23 Wall. 405.)

GUARDIANS AND PROCHEIN AMIS.

RULE 87.

How appointed.—Guardians *ad litem* to defend a suit may be appointed by the court, or by any

judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for the protection of infants and other persons.

Infants parties.—Infants defend by guardian appointed by court; usually nearest relation not interested. (Bank of U. S. v. Ritchie, 8 Peters, 128.)

REHEARING.

RULE 88.

Rehearing petition, what to contain.—Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the fact therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the supreme court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

Rehearing, when allowed.—Rehearings are allowed only where some plain omission or mistake has been made (Jenkins v. Eldredge, 3 Story, 299; Fed. Cas. No. 7267), sufficient to justify a new trial at common law (Bentley v. Phelps, 3 Wood. & M. 403; Fed. Cas. No. 1332), and the application for rehearing

should state some such reason. (Hunter v. Marlboro, 2 Wood. & M. 168; Fed. Cas. No. 6908.) Where a party obtains rehearing on new evidence he should file a supplemental bill stating such evidence. (Baker v. Whiting, 1 Story, 218; Fed. Cas. No. 786.) A rehearing will not be granted on the certificate of counsel merely that there are good grounds therefor. (Emerson v. Davies, 1 Wood. & M. 21; Fed. Cas. No. 4437; Tufts v. Tufts, 3 Wood. & M. 426; Fed. Cas. No. 14232.) A petition for rehearing is not granted ex parte, but only on notice to the adverse party. (Giant Powder Co. v. Cal. V. P. Co., 6 Sawy. 509, 4 Fed. Rep. 720.) A final decree cannot be annulled or set aside after the term when rendered, except by appeal or bill of review and not by rehearing (Scott v. Blaine, 1 Bald. 287; Fed. Cas. No. 12525; Roemer v. Simon, 1 Otto, 149); and this rule is imperative (Scott v. Hore, 1 Hughes, 163; Fed. Cas. No. 12535), except where there is no appeal to the supreme court, when it may be reheard if petition for rehearing be filed before end of next term after decree. (Clarke v. Threkeld, 2 Cranch C. C. 408; Fed. Cas. No. 2865; Moelle v. Sherwood, 148 U. S. 21.) Allowance for rehearings after decree are not a matter of right, but discretionary with court. (Daniel v. Mitchell, 1 Story, 198; Fed. Cas. No. 3563; American etc. Co. v. Sheldon, 18 Blatchf. 50, 1 Fed. Rep. 870.) The text of this rule cited in Easton v. Houston etc. R. R. Co., 44 Fed. Rep. 7; Roemer v. Simon, 91 U. S. 149; Glenn v. Noonan, 43 Fed. Rep. 403; Glenn v. Dimmock, 43 Fed. Rep. 550; Morgan's etc. Co. v. Tex. Cent. Ry. Co., 32 Fed. Rep. 530, quoting Sibbald v. U. S., 12 Peters, 488; Bank v. Moss, 6 How. 31; Bronson v. Schulten, 104 U. S. 415; Schell v. Dodge, 107 U. S. 630; Phillips v. Negley, 117 U. S. 665; Cannon v. U. S., 116 U. S. 55. A motion to open a decree in order to introduce new evidence is not a motion for a rehearing, technically so

called, and is not governed by the rule which requires the petitioner to make out a case beyond a reasonable doubt. (Campbell Printing Press & Mfg. Co. v. Marden, 70 Fed. Rep. 339.) Where the practice obtains of keeping the term open for business until the statutory time for opening the next term, a petition for rehearing filed before the term at which the decree was rendered has been adjourned sine die is not too late under the above rule. (First Nat. Bank v. Woodrum, 86 Fed. Rep. 1004.)

RULE 89.

Rules may be made by circuit courts.—The circuit courts (a majority of all the judges thereof, including the justice of the supreme court, the circuit judges, and the district judge for the district concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

Rule 89 as amended April 16, 1894, 152 U. S. 710.

Extent of.—Where no rule is prescribed by supreme court, circuit courts have power to regulate by rule, the mode of conducting trials, order of evidence, etc. (Phila. etc. Co. v. Stimson, 14 Peters, 448; Steam S. C. Co. v. Jones, 13 Fed. Rep. 581.) Equity courts will mold their rules so as to prevent injustice. (Poultney v. Lafayette, 12 Peters, 472.) Rules made by the court can be waived or modified for good reason. (Russell v. McLellan, 3 Wood. & M. 157; Fed. Cas. No. 12158.) But this court cannot rescind or modify a rule prescribed by the supreme court for its government. (Jenkins v. Greenwald, 1 Bond, 127; Fed.

Cas. No. 7270.) No rule can be allowed which is inconsistent with those established by the supreme court. (Bank of U. S. v. White, 8 Peters, 262.)

RULE 90.

Practice.—In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

English practice, how far adopted.—This rule adopts the English practice as it was known and understood at the time this rule was ordained. (Badger v. Badger, 1 Cliff. 237; Fed. Cas. No. 717.) This rule neither enlarges nor limits the jurisdiction, but simply regulates the practice where this court has jurisdiction. (Lewis v. Shainwald, 7 Sawy. 403, 48 Fed. Rep. 492.) It is the practice of the English court of chancery, and not the court of exchequer that forms the basis of our equity practice. (Smith v. Burnham, 2 Sum. 612; Fed. Cas. No. 13018.) The courts will follow this practice subject to such alterations as may under the acts of Congress be from time to time prescribed (Boyle v. Zacharie, 6 Peters, 648; Livingston v. Story, 9 Peters, 632; S. C., 13 Peters, 359; Rhode Island v. Massachusetts, 14 Peters, 210; Emerson v. Davies, 1 Wood. & M. 21; Fed. Cas. No. 4437; Lorillard v. Standard Oil Co., 18 Blatchf. 199, 2 Fed. Rep. 902), and it shall govern the practice in all cases where the supreme court rules do not apply. (Pomeroy v. Manin,

2 Paine, 476; Fed. Cas. No. 11260; Goodyear v. Prov. Rub. Co., 2 Cliff. 351; Fed. Cas. No. 5583.) The practice of State courts will not control these courts unless they adopt that practice as their own. (U. S. v. Parrott, McAll. 447; Fed. Cas. No. 15999; Martindale v. Waas, 11 Fed. Rep. 551, 3 McCrary, 637.) And no practice inconsistent with these rules can be established. (U. S. Bank v. White, 8 Peters, 262.)

RULE 91.

Affirmation equivalent to oath.—Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

RULE 92.

Decree in foreclosure suits.—In suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity of practice, where the decree is solely for the payment of money.

Promulgated April 18, 1864. 1 Wall. v.

Decree for deficiency.—A decree for a deficiency upon the foreclosure of a mortgage, may be rendered

under the above rule, without a special prayer therefor in the bill, though it is the better practice to insert such a prayer in the bill. (Seattle L. S. & R. Co. v. Union Trust Co., 79 Fed. Rep. 179.) If the proceeds of a mortgage sale are less than the amount due on the mortgage, the complainant is entitled, under the above rule, to a deficiency judgment as a matter of right. (Northwestern Mut. Life Assn. v. Keith, 40 U. S. App. 706; 77 Fed. Rep. 374.)

RULE 93.

Appeal in injunction cases, discretion.—When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

Promulgated January 13, 1879, 7 Otto, vii.

RULE 94.

Bill by stockholder against corporation.—Every bill brought by one or more stockholders in a corporation against the corporation and other parties founded on a right which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which

he complains, or that his share devolved on him since by operation of law; and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the cause of his failure to obtain such action.

Promulgated January 23, 1882, 14 Otto, ix.

Application of rule.—This rule applies only to a suit by stockholders against corporation founded on rights which the corporation may properly assert, and not on other rights. (Leo v. U. P. R. R. Co., 17 Fed. Rep. 273.) Plaintiff must show the efforts on his own part, and not on the part of others to secure redress. (Danumeyer v. Coleman, 11 Fed. Rep. 101.) This rule applies only to suits originally brought in the Federal courts, and not to suits brought in the State courts and removed. (Earle v. Seattle L. S. & E. Ry. Co., 56 Fed. Rep. 909; Evans v. Union Pac. Ry. Co., 58 Fed. Rep. 497.) Where it would be useless for a stockholder to demand of the directors that they bring suit to set aside a sale, none would be necessary. (Young v. Alhambra Min. Co., 71 Fed. Rep. 810.) A court of equity may in its discretion order the officers of a corporation to permit a shareholder to inspect its books at any stage of the proceedings. (Ranger v. Champion Cotton Press, 51 Fed. Rep. 61.) It is not a sufficient excuse for the failure of a stockholder suing to enforce rights of the corporation, to attempt to obtain remedial action by the corporation, that five of the seven directors who participated in the fraudulent transactions are still members of the directory.

(Church v. Citizens' St. Ry. Co., 78 Fed. Rep. 526.) But where a bill alleges that the officers and directors are seeking by collusive suits and other unlawful methods to control the property of the corporation in their own interests and to wreck the corporation, and praying for a receiver, it is not necessary to show compliance with the above rule. (Excelsior Pebble Phosphate Co. v. Brown, 74 Fed. Rep. 321.)

RULES OF PRACTICE

FOR THE

COURTS OF THE UNITED STATES

IN

ADMIRALTY AND MARITIME JURISDICTION,

ON THE INSTANCE SIDE OF THE COURT, IN PURSUANCE OF THE ACT OF THE TWENTY-THIRD OF AUGUST, 1842, CHAPTER 188.

RULE 1.

Process, issue and service of.—No mesne process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

Process, issue and service of.—United States admiralty courts may proceed under their general powers in every case where not restrained by statute. (U. S. v. Schooner Little Charles, 1 Brock. 380; Fed. Cas. No. 15613.) But the processes of these courts are subject to the supreme court, and the rules adopt-

ed by it therefor are conclusive on them. (Marshall v. Bazin, 7 N. Y. Leg. Obs. 342; Fed. Cas. No. 9125.) Original process must be served by the marshal or his deputy, and not by private persons. (Schwabaker v. Reilly, 2 Dill. 127; Fed. Cas. No. 12501.) Subpoenas are not necessarily served by the marshal. (Schwabaker v. Reilly, 2 Dill. 127; Fed. Cas. No. 12501.) Where a vessel is in the custody of the marshal, his receipt of a warrant of arrest in another suit, with intent to levy it, is a constructive levy, notwithstanding that he returns the warrant "withheld" because he was advised he had no right to make service on a vessel in custody, at the suit of the United States. (The Haytian Republic, 60 Fed. Rep. 292.)

RULE 2.

In suits in personam, nature of.—In suits *in personam* the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition in the nature of a summons to appear and answer to the suit, as the libelant shall in his libel or information pray for or elect.

Process in personam.—The process may be by arrest of the master or owner, or by attachment against the vessel. (North v. Brig Eagle, Bee, 78; Fed. Cas. No. 10309.) Attachment will lie both in cases of contract and of tort. (McGrath v. Candelero, Bee, 64;

Fed. Cas. No. 8810.) Whenever defendant has concealed himself or absconded, process by attachment will issue against his goods within the jurisdiction. (Manro v. Almeida, 10 Wheat. 473; Bouysson v. Miller, Bee, 187; Fed. Cas. No. 1709.) The ship and other tangible property are "effects" in the meaning of this rule (The Alpena, 7 Fed. Rep. 361), and may be reached by writ of garnishment in the hands of third persons. (The Alpena, 7 Fed. Rep. 361.) By the ancient and settled practice of courts of admiralty, a libel in personam may be maintained for any cause within their jurisdiction, wherever a motion can be served upon the libelee, or an attachment be made on any personal property or credits. (Manro v. Almeida, 10 Wheat. 473; Atkins v. Disintegrating Co., 18 Wall. 272; New England Ins. Co. v. Detroit & C. Steam Nav. Co., 18 Wall. 307; Cushing v. Laird, 107 U. S. 69; Devoe Mfg. Co., Petitioner, 108 U. S. 401; Ex parte Louisville Underwriters, 134 U. S. 488.) But if he cannot be found an attachment of his goods and chattels does not authorize an attachment in Alabama, where imprisonment for debt has been abolished. (Chiesa v. Conover, 36 Fed. Rep. 334; The Bremena v. Card, 38 Fed. Rep. 144. See Rule 47.)

RULE 3.

Bails, summary process.—In all suits *in personam* where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in an

appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or, upon appeal, by the appellate court.

Bail bonds, summary process.—To entitle a discharge from arrest, the bond should be not only for costs, but to satisfy the decree made against him (Gardner v. Isaacson, Abb. Adm. 141, Fed. Cas. No. 5230), in the court which shall ultimately decide the cause. (U. S. v. Schooner Little Charles, 1 Brock. 380, Fed. Cas. No. 15613.) A party cannot be held to bail in two places at the same time for the same cause of action. (Bingham v. Wilkins, Crabbe, 50, Fed. Cas. No. 1416.) Upon the decree execution issues summarily against stipulators, their submission thereto being a condition in such bonds. (Gaines v. Travis, Abb. Adm. 422, Fed. Cas. No. 5180.)

RULE 4.

Attachment, when may be dissolved.—In all suits *in personam* where goods and chattels or credits and effects are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stip-

ulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

Bond to release attachment.—The bond under this rule is accepted as a substitute for the property in subsequent proceedings. (U. S. v. Ames, 9 Otto, 35.) A decree and execution on such a bond may be awarded against a surety without a separate suit. (Munks v. Jackson, 29 U. S. App. 482; 66 Fed. Rep. 571.)

RULE 5.

Bonds or stipulations.—Bonds, or stipulations in admiralty suits, may be given and taken in open court or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

Amended May 6, 1872, 13 Wall. xiv.

Defective stipulation, bond or process.—A defect in execution of a bond or stipulation is deemed waived unless excepted to before close of term next after becoming known. (The Infanta, Abb. Adm. 327, Fed. Cas. No. 7031.) The recital in a release bond given after seizure of a vessel under an invalid warrant of arrest that the claimant and his surety personally appeared and submitted themselves to the jurisdiction of the court is not a waiver of the illegality, the claimant being ignorant of such invalidity, and the recital does not operate as an appearance in the suit.

(The Berkeley, 58 Fed. Rep. 920.) The court has power to require a new or further stipulation (Morrison v. District Court, 147 U. S. 14).

RULE 6.

Bail, reduction—New sureties.—In all suits *in personam* where bail is taken the court may upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court, to be given upon motion and due proof thereof.

RULE 7.

Warrant of arrest, when may issue.—In suits *in personam* no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

RULE 8.

Ship's tackle, etc., possession, how obtained.—In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a

hearing of the cause, if any, why the same should not be delivered over, award and decree that the same may be delivered over into the custody of the marshal or other proper officer if upon the hearing the same is required by law and justice.

RULE 9.

Cases of seizure, process in.—In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods or other thing into his possession for safe custody, and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

Process in rem.—Where the Federal and State courts have concurrent jurisdiction in rem, the right to maintain it attaches to the tribunal which first exercises it (Ship Robert Fulton, 1 Paine, 620, Fed. Cas. No. 11890); the State court cannot by its attachment supersede that of the Federal court (Certain Logs of Mahogany, 2 Sum. 589, Fed. Cas. No. 2559), nor will the Federal court interfere after an attachment by State court, but will leave property in its possession to prevent a conflict of jurisdiction. (Ship Robert Fulton, 1 Paine, 620, Fed. Cas. No. 11890.) Property so attached will be relased on the filing of a bond

according to the form used by the court. (Poland v. Brig Spartan, 1 Ware, 134; Fed. Cas. No. 11246.) In a suit in rem to enforce an alleged lien, the filing by defendant of a cross-libel in personam and securing a stay of proceedings on the original libel until security to respond in damages is given, was not a waiver of objections to the existence of a maritime lien (The Electron, U. S. App. 74 Fed. Rep. 689). It is within the discretion of a court of admiralty to entertain two libels for the same cause of action—one in personam and the other in rem (La Normandie, U. S. App. 58 Fed. Rep. 427). A motion to dismiss a libel in rem in admiralty may be made although a full hearing has been had on the merits, with testimony, and argument (The John C. Sweeney, 55 Fed. Rep. 540). Where a libel in rem filed against a vessel then within the jurisdiction, and, without issuance of monition or seizure of the vessel, the claimants voluntarily give a stipulation for value conditioned to perform and pay any decrees rendered, the court has jurisdiction to proceed with the cause just as if a vessel had first been seized, and a stipulation then given (The Frank Vanderkerchen, 87 Fed. Rep. 763). An unnecessary statement in a marshal's return as to the place of seizure of a vessel under a monition in a suit in rem is not conclusive of the court's jurisdiction over the res (The Lindrup, 70 Fed. Rep. 718).

RULE 10.

Perishable goods.—In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much there-

of to be sold as shall be perishable or liable to depreciation, decay or injury; and the proceeds, or so much thereof as shall be a full security to satisfy the decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordred by the court.

Sale of.—Where a cargo is liable to deterioration or a ship to injury by delay, the proper course is to apply for a sale of the same. (Ship Nathaniel Hooper, 3 Sum. 542, Fed. Cas. No. 10032.) The sale pendente lite, under this and the following rule, of a ship which is deteriorating in the hands of the marshal, will not be denied because the question at issue is the propriety of entertaining an action in rem against a vessel while in the hands of a receiver appointed by the court of another State, which question the receiver intends to have determined in the appellate court (The Willamette Valley, 63 Fed. Rep. 130).

RULE 11.

Ship, delivery to claimant.—In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under

the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of as it may deem most for the benefit of all concerned.

Release of, on filing bond.—Where a ship is delivered upon appraisement and stipulation, owner cannot be held liable to any greater extent, nor can he complain that the ship was worthless. (The Virgin, 8 Peters, 538.) Where only one of several claimants sign the stipulation, he is the only one held liable. (S. S. Zodiac, 5 Fed. Rep. 220.) A vessel will not be released during appeal. (The Bark Adolph, 5 Fed. Rep. 114.) A tender by the consignee of goods, of the freight due, made pending a suit for the freight, but not followed by a deposit in the registry, has no effect upon the liability for the subsequent costs on dismissal of the suit. (Henderson v. Three Hundred Tons Iron Ore, 38 Fed. Rep. 36.) The right of a vessel owner to protect himself from loss resulting from a seizure under admiralty process by giving bond and retaining possession, extends to possessory actions as well as others (The Poconoket, 61 Fed. Rep. 106). When a stranger to an original libel in rem gives a release bond conditioned to restore the vessel as the court shall direct, pay damages for its use and detention, and perform any other judgment which the court may render, etc., he thereby becomes a party to the cause, and is bound by a default decree thereafter entered in accordance with stipulations in the bond

(Briggs v. Taylor, 84 Fed. Rep. 681). A sale of a libeled vessel may be ordered before final decree, on the claimant's motion, when the libelant does not object after due notice, and especially when the claimant is financially responsible and personally liable for all lawful demands against it growing out of the collision in question (The Nevada, 85 Fed. Rep. 681). The rule allowing the rearrest of a vessel in case of misrepresentation and fraud or of an improvident release, goes no further than to allow such rearrest before judgment, and after the cause of action has become res judicata—there is no power in the court to order a rearrest. (The Hattie Bell, 65 Fed. Rep. 119).

RULE 12.

Suits by materialmen.—In all suits by materialmen for supplies, or repairs, or other necessaries, the libelant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

Amended May 1, 1859, 21 How. vi, and May 6, 1872, 12 Wall. xiv.

Suits for value of necessaries.—This rule does not enlarge the jurisdiction of the courts, but is made in the exercise of the power to regulate processes and procedure. (Steamer Lawrence, 1 Black, 522; Orleans v. Phoebus, 11 Peters, 175; Boon v. Hornet, Crabbe, 426, Fed. Cas. No. 1640; The Chusan, 2 Story, 455, Fed. Cas. No. 2717.) Congress by conferring admiralty jurisdiction impliedly adopts the maritime law. (The Chusan, 2 Story, 455, Fed. Cas. No. 2717.) The admiralty has jurisdiction in rem for necessaries and supplies furnished to foreign ships in our ports, to our ships in foreign ports, and to ships belong-

ing in one State furnished in another. (Brig Nestor, 1 Sum. 73; Fed. Cas. No. 10126.) Necessaries are those things which pertain to or are directly connected with or necessary to the navigation and voyage of the vessel. (Hubbard v. Roach, 9 Biss. 375, 2 Fed. Rep. 393.) Materialmen who furnish supplies to a foreign ship have a lien on it, and may enforce their right in rem in admiralty; such right is given by the maritime law. (The Aurora, 1 Wheat. 105; Gen. Smith, 4 Wheat. 438; The St. Jago de Cuba, 9 Wheat. 409; Ship Robert Fulton, 1 Paine, 620, Fed. Cas. No. 11890; Ship Nestor, 1 Sum. 73, Fed. Cas. No. 10126; Peyroux v. Howard, 7 Peters, 324; Ship Virgin, 8 Peters, 538; New Jersey etc. Co. v. Merchants' Bank, 6 How. 390; Davis v. New Brig, Gilp. 473, Fed. Cas. No. 3643; Gardner v. New Jersey, 1 Pet. Admr. 227, Fed. Cas. No. 5233; Stevens v. The Sandwich, 1 Pet. Adm. 233, Fed. Cas. No. 13409; Zane v. Brig President, 4 Wash. C. C. 453, Fed. Cas. No. 18201; The Jerusalem, 2 Gall. 349; Fed. Cas. No. 7294.) Supplies furnished in one State to a vessel belonging to another are furnished to a foreign vessel, the States being for this purpose foreign to each other. (The Chusan, 2 Story, 455; Fed. Cas. No. 2717; The Nestor, 1 Sum. 73; Fed. Cas. No. 10126; The Henrietta, Newb. Adm. 284; Fed. Cas. No. 6121; The Stephen Allen, 1 Blatchf. & H. 175; Fed. Cas. No. 13361; Tree v. The Indiana, Crabbe, 479; Fed. Cas. No. 14165; The Superior, Newb. Adm. 176; Fed. Cas. No. 4115; The Charles Mears, Newb. Adm. 197; Fed. Cas. No. 10766.) Where a lien exists by the foreign maritime law, our courts have power to enforce it, though all the parties are foreigners (The Maggie Hammond, 9 Wall. 435); but the questions arising thereon are governed by the general maritime law. (The Chusan, 2 Story, 455; Fed. Cas. No. 2717.) Necessaries in the port of

a State to which the ship belongs are governed by the local law, and no lien is implied; but if the local law gives a lien, it may be enforced in admiralty by a proceeding in rem. (The Lottawana, 21 Wall. 558; The Gen. Smith, 4 Wheat. 438; New Jersey etc. Co. v. Merchants' Bank, 6 How. 390; Peyroux v. Howard, 7 Peters, 324; Davis v. The Brig, Gilp. 473; Fed. Cas. No. 3643; The Marion, 1 Story, 68, Fed. Cas. No. 9087; Ship Robert Fulton, 1 Paine, 620, Fed. Cas. No. 11890; The Island City, 1 Low. 375, Fed. Cas. No. 7109; The S. M. Whipple, 7 Sawy. 69; The Canada, 7 Sawy. 173; The City of Salem, 7 Sawy. 477; Gardner v. New Jersey, 1 Pet. Adm. 227, 233, Fed. Cas. No. 5233, 13409, note; The Celestine, 1 Biss. 1, Fed. Cas. No. 2541; Remnants, Olcott, 382, Fed. Cas. No. 11697; The Calisto, 2 Ware, 30, Fed. Cas. No. 2316; The De Smet, 10 Fed. Rep. 483; contra, The Selt, 3 Biss. 344; Fed. Cas. No. 12649; The Circassian, 11 Blatchf. 473, Fed. Cas. No. 2726; Taylor v. The Commonwealth, 6 Chic. L. N. 334, Fed. Cas. No. 13788; Whittaker v. The Travis, 7 Chic. L. N. 277, Fed. Cas. No. 17599; The Harrison, 1 Sawy. 353, Fed. Cas. No. 5038; The Augusta, 5 Amer. L. T. 482, Fed. Cas. No. 647.) It is no consequence how the lien arises, whether by statute, municipal, or common law. (The Marion, 1 Story, 68, Fed. Cas. No. 9087.) If a person furnishing a foreign ship gives an exclusive credit, there is no lien. (Zane v. Brig President, 4 Wash. C. C. 453, Fed. Cas. No. 18201; The Patapsco, 13 Wall. 329.) Simply giving credit for a certain time does not extinguish the lien therefor. (Brig Nestor, 1 Sum. 73, Fed. Cas. No. 10126.) The party seeking to enforce a lien is bound to establish its existence. (Gen. Smith, 4 Wheat. 438.) Where the lien once attaches, it is only removed by an act which actually displaces it. (The Patapsco, 13 Wall. 329.) The remedy of the materialman is al-

ways threefold: against the vessel and freight in rem, the master in personam, or the owner in personam. (North v. Brig Eagle, Bee, 78, Fed. Cas. No. 10309; The Chusan, 2 Story, 455, Fed. Cas. No. 2717; The Gen. Smith, 4 Wheat. 438; The Marion, 1 Story, 68, Fed. Cas. No. 9087; Endner v. Greco, 3 Fed. Rep. 411; Shrewsbury v. Two Friends, Bee, 433, Fed. Cas. No. 12819; Phillips v. Thos. Scattergood, Gilp. 1, Fed. Cas. No. 11106; Schultz v. Bosman, 5 Hughes, 97, Fed. Cas. No. 12488.)

RULE 13.

Suits for mariners' wages.—In all suits for mariners' wages the libelant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam.*

Seamen's wages.—Seamen have a triple security for their wages, in the vessel, the owner and the master. (Bronde v. Haven, Gilp. 592, Fed. Cas. No. 1924.) The owner is liable personally, though his name is not mentioned in the shipping articles (Bronde v. Haven, Gilp. 592, Fed. Cas. No. 1924); and even though he let the ship to the master (unless at time seamen ship they so understand). (Skolfield v. Potter, Davies, 392, Fed. Cas. No. 12925.) The lien of seamen attaches to the ship and freight, and follows them wherever they may go. (Brown v. Lull, 2 Sum. 443, Fed. Cas. No. 2018.) The claims have priority over all others. (Brown v. Lull, 2 Sum. 443, Fed. Cas. No. 2018; The St. Jago de Cuba, 9 Wheat. 409.) They have precedence even over the claims of materialmen (Steamboat America, 16 Law. Rep. N. S. 264, Fed. Cas. No. 288); and over bottomry bonds (Pitman v. Hooper, 3 Sum. 50; Fed. Cas. No. 11185); and are not discharged by the sale of the vessel on execution

(Foster v. The Pilot, Newb. Adm. 215, Fed. Cas. No. 4980); nor until properly discharged according to law. (The Eastern Star, 1 Ware, 185, Fed. Cas. No. 4254.) Seamen have a lien on freight money earned by the vessel. (Sailor Prince, 1 Ben. 234, Fed. Cas. No. 12218.) In case of a wreck where portions are saved seamen have a lien on them for wages (Brackett v. The Hercules, Gilp. 184, Fed. Cas. No. 1762); but if they abandon the wreck they lose their lien against any portion which may be saved. (Lewis v. Elizabeth and Jane, 1 Ware, 33, Fed. Cas. No. 8321.) Though a seaman who shipped for a voyage render services only in port, he has a lien on vessel for his wages (Brig Blohm, 1 Ben. 228, Fed. Cas. No. 1556), even though the vessel do not make voyage. (The Island City, 1 Low. 375, Fed. Cas. No. 7109.) Seamen's wages in an illegal voyage cannot be recovered in a court of law. (Brig Langdon Cheves, 2 Mason, 58; Fed. Cas. No. 8063.) The mariner's lien has no analogy to common-law liens as regards possession of subject of lien. (Ship Mary, 1 Paine, 180, Fed. Cas. No. 9186.) The master of a vessel has no lien thereon for wages. (Steamboat Orleans, 11 Peters, 175; L'Arina v. Brig. Exchange, Bee, 198; Fed. Cas. No. 8088; L'Arina v. Manwaring, Bee, 199, Fed. Cas. No. 8089; Logan v. Steamboat Aeolian, 1 Bond, 267, Fed. Cas. No. 8465.) But a master may maintain a suit in personam for his wages. (Hammond v. Essex F. J. Co., 4 Mason, 196, Fed. Cas. No. 6001.) Under the rules of the district court of the northern district of California, an amended libel to enforce an alleged lien on the cargo for wages need not be verified when such cargo has been released on stipulation under the original libel, and libelants are beyond the jurisdiction (The Marion, 79 Fed. Rep. 104). A vessel and her owner cannot be joined in the same libel for mariners' wages; a libel which attempts it

should be dismissed. (The Ethel, 30 U. S. App. 214, 66 Fed. Rep. 340.) A warrant of arrest for seamen's wages issued by the clerk in the absence of the judge contrary to the provision of a rule of court, is void. (The Berkeley, 58 Fed. Rep. 920.)

RULE 14.

Suits for pilotage.—In all suits for pilotage the libelant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam.*

Pilotage.—The admiralty has jurisdiction in rem as well as in personam for money earned in piloting a vessel. (Schooner Anna, 1 Mason, 507, Fed. Cas. No. 412; Hyer v. Schooner Wave, 7 N. Y. Leg. Obs. 97, Fed. Cas. No. 17297; The William Law, 14 Fed. Rep. 792.) A contract for pilotage duly authorized is a lien on the vessel (The Anne, 1 Mason, 507, Fed. Cas. No. 412); but wrongdoers or mutineers have no authority to bind a ship for pilotage. (The Anne, 1 Mason, 507, Fed. Cas. No. 412; Logan v. Steamboat Aeolian, 1 Bond, 267, Fed. Cas. No. 8465.)

RULE 15.

Suits for damage by collision.—In all suits for damage by collision the libelant may proceed against the ship and master, or against the ship alone, or against the master or owner alone, *in personam.*

Damage by collision, suit for.—Admiralty courts take jurisdiction of all collisions on the high seas or within the tide waters of the United States. (Waring v. Clarke, 5 How. 441.) The owner of the vessel injured by a collision has a lien on the offend-

ing vessel of equal rank with those of materialmen. (Steamboat America, 16 Law Rep. N. S. 264, Fed. Cas. No. 288). The libelant may proceed against the ship and master, ship alone, owner alone, or master alone. (Ward v. Ogdensburg, 1 Newb. 139, Fed. Cas. No. 17158; Newell v. Norton, 3 Wall. 257.) Joining the ship and owner is prohibited. (Ward v. Ogdensburg, 1 Newb. 139; Fed. Cas. No. 17158; S. S. Zodiac, 5 Fed. Rep. 220; The Clatsop Chief, 7 Sawy. 274.) But the libelant may proceed successively in each way until the demand is satisfied. (Ward v. Ogdensburg, 5 McLean, 622, Fed. Cas. No. 17158.) Though the collision arise through negligence of master, ship is primarily, though not exclusively, liable. (Hale v. Wash. Ins. Co., 2 Story, 176, Fed. Cas. No. 5916.) Collisions occurring in foreign ports are governed by the statutes existing in such port. (Smith v. Condry, 1 How. 28.) In a collision case the expense of surveying the injured vessel is recoverable as part of the damages. Interest is allowed on all items of damages. (The Bulgaria, 83 Fed. Rep. 312.) Testimony of experts as to the angle at which a collision between the two vessels must have occurred, based upon examinations of the vessels made after accident, is not sufficient to warrant a reversal of a finding of the trial judge based upon testimony of eye-witnesses of the collision. (The Fair Wind, 26 U. S. App. 466; 64 Fed. Rep. 806.)

RULE 16.

Suits for assault and battery.—In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

Assault and battery.—The admiralty has cognizance of all torts committed within the admiralty

and maritime jurisdiction of these courts. (Thomas v. Lane, 2 Sum. 1, Fed. Cas. No. 13902.) An officer of a ship is personally liable for an assault and battery on a seaman (Forbes v. Parsons, Crabbe, 283, Fed. Cas. No. 4929; Roberts v. Dallas, Bee, 239, Fed. Cas. No. 11898), or on a passenger. (Chamberlain v. Chandler, 3 Mason, 242, Fed. Cas. No. 2575.) The master may be held liable for such assault of his officer done under his authority or knowledge. (Hanson v. Fowle, 1 Sawy. 539, Fed. Cas. No. 6042.) As to what is an assault within the rule, see The Lord Derby, 17 Fed. Rep. 265. The above rule precludes a seaman from maintaining a suit in rem to recover damages for assaults and injuries inflicted by the captain. (The Lyman D. Foster, 85 Fed. Rep. 987.)

RULE 17.

Suits for hypothecation.—In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessaries for the voyage, without any claim of marine interest, the libelant may proceed either *in rem* or against the master, or the owner alone, or *in personam.*

Hypothecation of vessel.—Hypothecation is void unless made in a foreign port; but in the United States all ports but the home port are foreign to the vessel. (Burk v. Brig M. P. Rich, 1 Cliff. 308, Fed. Cas. No. 2161.) Hypothecation is void unless advances were exigently necessary to effectuate the object of the voyage or safety of the ship (The Grapeshot, 9 Wall. 129; Selden v. Hendrickson, 1 Brock. 396, Fed. Cas. No. 12639; Crawford v. The Wm. Penn, 3 Wash. C. C. 484, Fed. Cas. No. 3373), or were be-

lieved to be necessary after due inquiry (The Lulu, 10 Wall. 192; The Neversink, 5 Blatchf. 539, Fed. Cas. No. 10133), or that they could not be procured on owner's credit (The Aurora, 1 Wheat. 96; The Kalorama, 10 Wall. 208; The Patapsco, 13 Wall. 329; O'Hara v. Ship Mary, Bee, 100; Fed. Cas. No. 10467); for it is not a contract of hypothecation if there were funds for such advances in consignee's hand. (Hurry v. Ship John and Alice, 1 Wash. C. C. 293, Fed. Cas. No. 6923.)

RULE 18.

Suits on bottomry bonds, when in rem and when in personam.—In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosesoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer.

Bottomry bonds.—A bottomry bond may be made either in a foreign or a home port. (The Draco, 2 Sum. 157, Fed. Cas. No. 4057.) Such a bond made in a foreign port between foreigners will be enforced here, if the ship is in the maritime jurisdiction of the United States courts. (The Jerusalem, 2 Gall. 190, Fed. Cas. No. 7293; The Packet, 3 Mason, 255, Fed. Cas. No. 10654.) Necessity only can authorize a master to pledge the vessel for repairs by giving a bottomry bond (Patton v. Randolph, Gilp. 457, Fed. Cas. No. 10837); where the owner is present, or he has funds, he cannot do so. (Patton v. Randolph, Gilp. 457, Fed. Cas. No. 10837.)

RULE 19.

Suits for salvage.—In all suits for salvage the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

Suits for salvage.—Salvors cannot in the same libel proceed in rem against the vessel and in personam against the consignors (The Sabine, 11 Otto. 384); but this does not exclude the right to pursue these remedies severally. (Brevoor v. Ship Fair American, 1 Pet. Adm. 87, Fed. Cas. No. 1847.) A lien for salvage services exists on the property saved (Eads v. Steamboat Bacon, 1 Newb. Adm. 274, Fed. Cas. No. 4232; The Camanche, 8 Wall. 448), and accompanies the property and will follow it in hands of a bailee (Gates v. Johnson, 21 Law Rep. N. S. 277, Fed. Cas. No. 5268), but a lien for salvage cannot be enforced against United States personal property by proceeding in rem. (The Davis, 10 Wall. 15.) Where some of the salvors do not prosecute their claim, this inures to the benefit of the owners of the vessel, and not to the other salvors. (The Blackwall, 10 Wall. 1.) A salvor of property which has been taken from his possession by replevin in a State court may maintain a suit in personam against the owner to recover salvage compensation. (Hudson v. Whitmire, 77 Fed. Rep. 846.)

RULE 20.

In petitory and possessory suits.—In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of

the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

Rights of part owners.—A part owner may ask the court for security for safety of the vessel on a voyage not approved by him. (Fox v. Lodemia, Crabbe, 271, Fed. Cas. No. 5014; The Marengo, 1 Sprague, 506, Fed. Cas. No. 9066.) The court will not interfere with one half-owner's possession when the other, who had charge of the vessel, left it in an unsafe condition. (The Ocean, 1 Sprague, 535, Fed. Cas. No. 10401.) This rule requires a proceeding in rem and in personam. (Kynoch v. Propeller S. C. Ives, 1 Newb. Adm. 205, Fed. Cas. No. 7958) jointly and in one action. (The Zenobia, Abb. Adm. 48, Fed. Cas. No. 18208.) Where some of the owners of a salving ship were also part owners in the salved property, and their interests in the respective properties are varied and graded, see A Lot of Whalebone, 51 Fed. Rep. 916.

RULE 21.

Decrees, enforcement of.—In all cases of a final decree for the payment of money the libelant shall have a writ of execution, in the nature of a *fieri facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the

goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

Amended December Term, 1861, 1 Black, vi.

Execution.—A stipulation given for release of a vessel takes the place of a vessel (The Fidelity, 16 Blatchf. 569, Fed. Cas. No. 4758), and execution will issue summarily against the stipulators. (Gaines v. Travis, Abb. Adm. 422, Fed. Cas. No. 5180.) The decree for the payment of money must be enforced by execution, and not by sequestration. (The Blanch Page, 16 Blatchf. 1, Fed. Cas. No. 1524.) The fact that a decree upon a release bond of a vessel is in excess of the penalty named in the bond does not deprive the court of jurisdiction but the decree is a nullity for the excess only. (Munks v. Jackson, 66 Fed. Rep. 571.) Where a suit in rem in admiralty is dismissed because the court has no jurisdiction over the res, the court can make no decree as to costs. (The Lindrup, 70 Fed. Rep. 718.)

RULE 22.

Informations and libels on seizures.—All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United

States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return day of the process why the forfeiture should not be decreed.

Forfeitures, informations for.—To give jurisdiction the libel must show that there has been and is still subsisting a seizure of the vessel for an offense. (The Washington, 4 Blatchf. 101, Fed. Cas. No. 17221; U. S. v. Ninety-two Barrels Spirits, 8 Blatchf. 480, Fed. Cas. No. 15892.) The libel should state distinctly the matters relied on as grounds or causes of forfeiture. (Eighteen Thousand Galls. Dis. Spirits, 5 Ben. 4, Fed. Cas. No. 4317.) But it is no bar that the grounds of forfeiture are not the same as those on which the seizure was made. (Wood v. U. S., 16 Peters. 342.) The libel should aver specially all material facts constituting the offense charged. (Brig Caroline v. U. S., 7 Cranch, 496; Brig Caroline, 1 Brock. 384, Fed. Cas. No. 2418; U. S. v. Twenty-five Barrels Alcohol, 10 Int. Rev. Rec. 17, Fed. Cas. No. 16562.) Time and place of seizure must be specially averred. (U. S. v. Timber, 13 Fed. Rep. 769.) A general reference to the provisions of the statute is not sufficient. (Schooner Hoppet v. U. S., 7 Cranch, 389.) Where a vessel has been once libeled for several violations of the revenue laws and released on bond, she is not thereafter subject to a second seizure for alleged violations committed during the same period as those for which she has already been seized. (The Haytian Republic, 57 Fed. Rep. 508.)

RULE 23.

Libel in instance causes.—All libels in instance causes, civil or maritime, shall state the nature of

the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and if *in personam*, the names and occupations and of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libelant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce its rights *in rem* or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libelant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

What to be stated.—The libel should always show the jurisdiction of the court. (Boon v. The Hornet, Crabbe, 426, Fed. Cas.: No. 1640; Thomas v. Lane, 2 Sum. 1, Fed. Cas. No. 13902.) The subject-matter of the libel should be stated with certainty and precision, and with averments admitting of distinct answers (Schooner Boston, 1 Sum. 328, Fed. Cas. No. 1673; The Bark Havre, 1 Ben. 295, Fed. Cas. No. 6232; Pet ingill v. Dinsmore, Davies, 209; Fed. Cas. No. 11045); as movements and course of vessels in case of collision (McWilliams v. Steam Tug Vim, 2 Fed. Rep. 875; but see Virginia Home Ins. Co. v. Sunberg, 54 Fed. 389); and time and place (Treadwell v. Joseph, 1 Sum. 390, Fed. Cas. No. 14157; Thomas v. Lane, 2

Sum. 1; Fed. Cas. No. 13902). Pleas and exceptions should set forth the matter in dispute in definite terms, but not with formality of common-law pleading. (Schooner v. Novarra, Olcott, 127, Fed. Cas. No. 10059.) Inserting the name of a party having no interest may be disregarded. (Talbot v. Wakeman, 19 How. Pr. 36, Fed. Cas. No. 13731.) It is not necessary in a libel to state any fact which constitutes a matter of defense. (Aurora v. U. S., 7 Cranch, 382.) Under this rule interrogatories annexed to the libel are confined to issuable matter, and only the defendant's oath is required in response thereto. (Havermeyer & Elder Sugar Ref. Co. v. Compania Transatlantica Espanola, 43 Fed. Rep. 90.) The requirement that a libel in rem must state that the property is in the district does not prevent the court from acquiring jurisdiction in the case of a vessel which, being in the district at the time in which the libel was verified, departs before it is filed, but returning after it is filed is seized on alias monition. (The Queen of the Pacific, 61 Fed. Rep. 213.) A libel against a tug to recover damages for the abandonment of a contract to tow a barge during an entire season should point out the manner in which the alleged damages arose, and a mere statement of a gross sum is subject to exception. (The Osconda, 66 Fed. Rep. 347.)

RULE 24.

Amendments to libels, etc., of course.—In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form, may be made at any time, on motion, to the court as of course. And new counts may be filed, and amendments, in matters of substance may be made upon motion at any time before the final decree, upon such terms as the court shall impose.

And where any defect of form is set down by the defendant upon special exceptions and is allowed, the court may, in granting leave to amend, impose terms upon the libelant.

Amendments to libels.—A libel may be amended on motion, as of course, after exception without submitting to the exception. (Town v. Western Metropolis, 28 How. Pr. 283, Fed. Cas. No. 14114; Newell v. Norton, 3 Wall. 257.) A libel or information in rem may be amended (Brig Caroline v. U. S., 7 Cranch, 496), even after reversal for want of substantial averments. (Schooner Anne, 7 Cranch, 570.) An amendment to a libel filed after a ship has been released on stipulation, setting up a claim not included in the original libel and not germane to the subjects thereof, cannot be allowed. (The Iona, 80 Fed. Rep. 933.) A libel may be amended by the United States to show violations of the revenue laws committed by a vessel during the same period as those for which she has already been libeled. (The Haytian Republic, 57 Fed. Rep. 508.) The allowance of an amendment of a claim by substituting a new party as claimant is ineffectual if such party fails to submit to the jurisdiction. (The Eliza Lines, 61 Fed. Rep. 308.) Under a libel in rem on a contract of affreightment to recover for cargo destroyed in extinguishing a fire, libelant may be allowed to shift his claim to a demand for a general average, when the facts alleged in the libel and answer are sufficient taken together to sustain the same. (The Rapid Transit, 52 Fed. Rep. 320.) A libel for collision containing no prayer for interest may be amended by filing an amended libel after all the issues except the amount of damages have been determined. (The J. E. Trudeau, 54 Fed. Rep. 907.) Where the sureties on a release bond would not be affected by the allow-

ance of an amendment making a third person a party respondent to a libel, such amendment should be allowed. (Boden v. Demwolf, 56 Fed. Rep. 846.) Amendments to the libel are allowable, in the discretion of the court, until the termination of the cause and even in matters of substance; and an amended or supplemental libel may be allowed to stand as an original libel. But amendments are limited by due consideration of the rights of the opposite party, and will be denied if his rights would be prejudiced. (O'Connell v. One Thousand and Two Bales of Sisal Hemp, 75 Fed. Rep. 408.) A mere change in the name of the libelant by substituting the real party in interest for the nominal party will not avoid a stipulation in admiralty as against the sureties, if the cause of action remains the same. (The Beaconsfield, 158 U. S. 303.)

RULE 25.

Security for costs, when.—In all cases of libels *in personam* the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

Security for costs.—There should usually, under this rule, be a security for costs (Rawson v. Lyon, 15 Fed. Rep. 831); but if defendants appear without it, and no exception is taken, security is thereby waived. (Pharo v. Smith, 18 How. Pr. 47, Fed. Cas. No. 11062.)

RULE 26.

Claim, when to be verified.—In suits *in rem* the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be at the time of the arrest in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim the claimant shall file a stipulation, with sureties in such sum as the court shall direct for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or upon an appeal by the appellate court.

Verification by agent.—An agent verifying a claim must also make oath that he is duly authorized to do so. (The R. W. Skillinger, 1 Flipp. 437, Fed. Cas. No. 12181; U. S. v. Twenty-five Barrels Alcohol, 10 Int. Rev. Rec. 17, Fed. Cas. No. 16562; see The Two Marys, 12 Fed. Rep. 152.)

Costs.—Where an owner gives a stipulation for costs, he is liable only for costs properly incident to the contest. (The Vernon, 36 Fed. Rep. 113.)

RULE 27.

Answer to be verified.—In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the al-

legations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.

Qualified by Rule 48; vide, post.

Verification of answer.—The answer must be on oath (Samuel v. Skinner, 2 Gall. 45, Fed. Cas. No. 5210), and of the defendant himself and not another for him. (Teasdale v. The Rambler, Bee Adm. 9, Fed. Cas. No. 13815.)

Amendment of answer.—Refusal to permit the amendment of an answer to a libel in admiralty by setting up laches and res judicata is not an abuse of discretion when respondent was not misled and any loss sustained was the result of his own conduct. (O'Brien v. Miller, 168 U. S. 287.)

Answer—Generally.—It is proper practice in admiralty to embrace a plea to the jurisdiction with an answer to the merits. (The Lindrup, 70 Fed. Rep. 718.) The libelant is entitled to an admission or denial of each distinct and separate averment in his libel separately and distinctly. (Virginia Home Ins. Co. v. Sundberg, 54 Fed. Rep. 389.)

RULE 28.

Exception to answer.—The libelant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions or any of them, to be

good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

Exception to answer.—An exception to an allegation that it serves no legal purpose is properly excepted to for impertinence. (The Pioneer, Deady, 58; Fed. Cas. No. 11176.)

RULE 29.

Default, effect of.—If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken up *pro confesso* against him, and the court shall proceed to hear the cause *ex parte* and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

Default, effect of.—A default here has the effect of a default at the common law; it establishes the fact pleaded and justifies a decree. (Miller v. U. S., 11 Wall. 268.)

RULE 30.

Further answer, when required.—In all cases where the defendant answers, but does not answer

fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libelant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and if no answer had been put in thereto.

RULE 31.

What allegation need not be answered.—The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offense.

Criminating evidence need not be produced.—A party is not bound to produce any evidence which would subject him to a forfeiture for a penal offense. (U. S. v. Twenty-eight Packages, Gilp. 306; Fed. Cas. No. 16561; Pollock v. The Laura, 5 Fed. Rep. 133.)

RULE 32.

Interrogatories propounded in answer.—The defendant shall have a right to require the personal answer of the libelant, upon oath or solemn affirmation, to any interrogatories which he may at the close of his answer propound to the libelant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall

expose the libelant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libelant to such interrogatories, the court may adjudge the libelant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

When interrogatories should be allowed.—(See the Mexican Prince, 70 Fed. Fed. 246.)

Refusal to answer interrogatories.—Where an answer to an interrogatory is refused, the charge to which the interrogatory relates may be taken pro confesso (The David Pratt, 1 Ware, 509; Fed. Cas. No. 3597), or the defendant may be compelled to answer the interrogatories. (Gammell v. Skinner, 2 Gall. 45; Fed. Cas. No. 5210.)

RULE 33.

Verification of answer to interrogatory, when dispensed with.—Where either the libelant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in the furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

RULE 34.

Intervention.—If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interests therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

Intervenors, rights of.—A person claiming an interest may intervene and contest forfeiture so far as decree would be conclusive of his rights (The Mary Anne, 1 Ware, 99; Fed. Cas. No. 9195), even though his original demand could not have been proceeded for in admiralty. (Harper v. New Brig, Gilp. 536; Fed. Cas. No. 6090.) He merely seeks protection of his interest or payment of his claim, and not possession of the vessel. (The Two Marys, 12 Fed. Rep. 152.) A mortgagee of a vessel may intervene in a suit in rem. for the purpose of resisting liens sought to be established by libelants. (The H. N. Emilie, 70 Fed. Rep. 511.) The above rule has reference only to cases where the vessel is still in custody, or has been

sold and the proceeds paid into court. (The Oregon, 158 U. S. 186.)

RULE 35.

Stipulations, how given and taken.—The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or other maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

See notes to Rule 5.

RULE 36.

Exceptions, effect of allowance.—Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

Amended May 6, 1872. 14 Wall. xi.

RULE 37.

Attachment, proceedings against garnishee.—In cases of foreign attachment the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libelant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

Proceedings against garnishee.—Where defendant has absconded or concealed himself, process may issue against his credits and effects in the hands of a third party. (Manro v. Almeida, 10 Wheat. 473.) It is the right and duty of the garnishee to put in an answer, and libelant has not the right to contest said answer. (Shory v. Rennell, 1 Sprague, 418; Fed. Cas. No. 12807.) On default of garnishee, libelant may have process to compel him to answer (McDonald v. Rennell, 11 Law Rep. N. S. 157, Fed. Cas. No. 8765), by execution, first against the effects of the principal in his hands, and then on his own property. (Shory v. Rennell, 1 Sprague, 418; Fed. Cas. No. 12807.)

RULE 38.

Property, how brought into court.—In cases of mariners' wages or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit; and upon failure of the party to comply with the order may award an attachment, or other compulsory process, to compel obedience thereto.

Process to bring property into court.—The proper process to bring property into court is by monition, and not by execution against the party having the

possession thereof. (The Gran Para, 10 Wheat. 497; Sheppard v. Taylor, 5 Peters, 675.)

RULE 39.

Nonappearance of libelant—Dismissal.—If, in any admiralty suit, the libelant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy, and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

RULE 40.

Decree, when may be rescinded.—The court may in its discretion, upon the motion of the defendant and on payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

Rehearing.—A rehearing cannot be had after the term at which decree was rendered has passed. (Steamboat New England, 3 Sum. 495; Fed. Cas. No. 10151.)

RULE 41.

Sales of property and proceeds.—All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is

a party in interest, in pursuance of the order of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

Duty of marshal.—Upon interlocutory sales, it is the duty of the marshal to bring the proceeds into court, with an account of sales. (The Avery and Cargo, 2 Gall. 308; Fed. Cas. No. 671.) If the sale is on credit, the immediate proceeds should be brought into court. (Walls v. Thornton, 2 Brock. 422; Fed. Cas. No. 17111.) Where a vessel and cargo are sold and the proceeds deposited in lieu of such vessel and cargo in a bank, subject to the order of the court, the government is not responsible for any loss or diminution of the fund; and a decree for the restitution of the vessel and cargo to the owner carries only what may remain of the fund, and imposes no liability upon the government for any part of it which may have been lost. (United States v. Coudert, 38 U. S. App. 515; 73 Fed. Rep. 505.) On libel for freight, where the claimant pleads a tender and pays the amount tendered into the registry of the court, the libelant is entitled to an order for the payment of that amount to him before there is any trial of the issue. (Higbee v. Ninety-Six Hundred Cases of Tomatoes, 59 Fed. Rep. 783.) Proceedings on separate libels relating to the distribution of the proceeds of a vessel and her freight may be consolidated and tried together. (The Eliza Lines, 61 Fed. Rep. 308.)

RULE 42.

Moneys, deposit of.—All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so de-

posited in the name of the court, and shall not be drawn out except by check or checks signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book containing a memorandum and copy of all the checks so drawn and the date thereof.

See preceding rule.

RULE 43.

Intervenor for proceeds, how to come in.—Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene *pro interesse suo* for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may in its discretion award costs against the petitioner in favor of the adverse party.

Intervention for proceeds.—A party having a vested right in funds in hands of the court may claim a distribution to him (Harper v. A New Brig, Gilp. 536; Fed. Cas. No. 6090; The Lottawana, 21 Wall. 558; The Goldsmith, 1 Newb. Adm. 123; Fed. Cas. No. 8152); as in case of a mortgagee on part of the vessel (Schuchart v. Ship Angelique, 19 How. 239; Ship Panama, Olcott, 55; Fed. Cas. No. 5163; The Alice Getty, 2 Flipp. 20; Fed. Cas. No. 193), whether he could or could not enforce his original claim in admiralty.

(Leland v. Medora, 2 Wood. & M. 92; Fed. Cas. No. 8237); and when a materialman has libeled a vessel other materialmen may intervene. (The Julia, 57 Fed. Rep. 233.) But such funds cannot be applied to a contract merely personal, as a debt of the owner. (Brackett v. Hercules, Gilp. 184; Fed. Cas. No. 1762. See The Balize, 52 Fed. Rep. 414.) What does not amount to laches on part of intervenors. (See The Oregon, 73 Fed. Rep. 846.)

RULE 44.

Reference to commissioners, when.—In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and to examine the parties and witnesses touching the premises.

Reference to commissioners.—When there is a dispute as to accounts, priority of liens and like matters, reference to a commissioner is proper. (Shaw v. Collier, 18 How. Pr. 238; Fed. Cas. No. 12718; Furniss v. Brig Magoun, Olcott, 55; Fed. Cas. No. 5163.) When by written consent a cause is referred to a commissioner his findings of fact are entitled to the same weight as those of a master in chancery. (The Elton, 42 U. S. App. 666; 83 Fed. Rep. 519; Panama R. Co. v. Napier Shipping Co., 20 U. S. App. 568; 61 Fed. Rep. 408.)

RULE 45.

Appeals, when made.—All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.

Amended May 6, 1872, 13 Wall. xiv.

Appeals, when taken.—An appeal must be taken in open court before the adjournment of the term, sine die. (Norton v. Rich, 3 Mason, 443; Fed. Cas. No. 10352.) But if notice of appeal is filed within thirty days after decree, the appeal will be allowed whenever justice requires it. (Nuestra Senora, 17 Wall. 29.) In cross-appeals, heard together on the same evidence, only one docket fee is taxable. (The Rabboni, U. S. App.; 84 Fed. Rep. 681.)

RULE 46.

Practice, courts to regulate.—In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

RULE 47.

Arrest, bail when taken.—In all suits *in personam* where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and

the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

Imprisonment for debt, where abolished.—And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been or shall be hereafter abolished, upon similar or analogous process issuing from a State court.

Promulgated December Term, 1850, 10 How. v. See Bremena v. Card, 38 Fed. Rep. 144. See Rule 23.

Arrest and bail.—These rules being authorized by statute, an arrest under them has the effect of an arrest under and by virtue of a statute. (Gaines v. Travis, Abb. Adm. 422; Fed. Cas. No. 5180; Marshall v. Bazin, 7 N. Y. Leg. Obs. 342; Fed. Cas. No. 9125.) Where bail is allowed by the State law, a party may have it here as a matter of right. (Beers v. Haughton, 9 Peters, 329.) The above rule abolishing imprisonment for debt does not affect the power of the Federal court sitting in admiralty to issue a warrant of arrest as process for compelling defendants to respond to a claim for damages for personal injuries and cruelty inflicted on a seaman. (Bolden v. Jensen, 69 Fed. Rep. 745.) Where a master and mate were arrested in Oregon on a libel for damages for injuries inflicted on seamen on the high seas, they could not be required to give a bond conditioned for the payment of money awarded by the final decree. (Stone v. Murphy, 86 Fed. Rep. 158.)

RULE 48.

Answer, sufficiency of.—The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court. All rules and parts of rules heretofore adopted inconsistent with this order are hereby repealed and annulled.

Promulgated December Term, 1850, 10 How. vi.

RULE 49.

Appeal, further proof, how taken.—Further proof taken in a circuit court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a circuit court pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789. upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories if he think

fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles' travel; *provided*, that the court in which such appeal may be pending, or either of the judges thereof may, upon motion, increase or diminish the length of notice above required.

Promulgated December Term, 1851, 13 How. vii. See Revised Statutes, sec. 865.

Further proof on appeal.—Where the evidence is so contradictory or ambiguous as to render the decision difficult, the court will order further proof. (The Samuel, 1 Wheat. 9.) If no order therefor appear on the record, and no objection taken thereto, it is presumed that there was an order or mutual consent. (The Georgia, 7 Wall. 33.) Where a party was prevented by illness from attending a hearing, and the matter went to judgment for libelant, it was a proper case for permitting claimant to take evidence pending an appeal. (The Glide, 68 Fed. Rep. 719.)

RULE 50.

Oral evidence, when admissible on appeal.—When oral evidence shall be taken down by the clerk of the district court, pursuant to the abovementioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them if he should so elect.

Promulgated December Term, 1851, 13 How. vi.

RULE 51.

New facts in answers, how met.—When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libelant, and no replication, general or special, shall be filed unless allowed or directed by the court on proper cause shown. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libelant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

Original rule promulgated December Term, 1854, 17 How. vi; amended January 27, 1896, 160 U. S. 693.

RULE 52.

1. Records on appeal, how made up.—The clerks of the district courts shall make up the records to be transmitted to the circuit courts on appeals, so that the same shall contain the following:

1. The style of the court.

2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof, all bail and stipu-

lations, and, if any sale has been made, the orders, warrants, and reports relating thereto.

4. The libel, with exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libelant, and any exhibits not annexed to the libel.

7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.

8. Any order of the court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to, which are merely preparatory for trial.

3. The commission to take depositions, notice therefor, their captions, and certificates of their being sworn to unless some exception to a deposition in the district court was founded on some one or more of these; in which case so much

of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories the answer shall be inserted immediately following the question.

Note.—Where the causes assigned were good, but the transcript was defective, but not attributable solely to appellant, a motion to dismiss was denied, and appellant was directed to file a proper transcript by the first day of the next term. (The Ethel, 31 Fed. Rep. 576.) Omissions in the record may be brought before the court by certiorari by appellees. (Hoskin v. Fisher, 125 U. S. 217.) It is desirable that the record should show which witnesses were examined in the presence of the district judge, and which were not. (The Gypsum Prince, 35 U. S. App. 165; 67 Fed. Rep. 612.)

2. **Certificate of Clerk.**—The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of record of the district court in the cause named at the beginning of the copy, made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

3. **What may be omitted on stipulation.**—Hereafter, in making up the record to be trans-

mitted to the circuit court, on appeal, the clerk of the district court shall omit therefrom any of the pleading, testimony, or exhibits which the parties, by their proctors, shall, by written stipulation, agree may be omitted, and such stipulation shall be certified up with the record.

Promulgated December Term, 1854, 17 How. vi. Amended by adding clause 3, May 2, 1881, 13 Otto, xiii.

Record on appeal.—Where exceptions taken in the lower court do not appear on the record they are deemed to have been waived. (The Vaughan, 14 Wall. 258.) The record should show the amount in controversy, but if not shown, further time therefor may be allowed. (The Grace Girdler, 6 Wall. 441.)

RULE 53.

Cross-libel, security for costs by respondent.—Whenever a cross-libel is filed upon any counter-claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security, in the usual amount and form, to respond in damages as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

Promulgated December Term, 1868, 7 Wall. v.

Cross-libel security for costs.—The claim on which the cross-libel is founded must arise out of the same cause of action as the libel itself (Crowell v. Schooner Theresa Wolf, 5 Fed. Rep. 152), but not necessarily

the same legal demand. (Vianello v. Credit Lyonnais, 15 Fed. Rep. 637.) The object of the rule is to compel respondent to cross-bill to give security (Steamer Bristol, 4 Ben. 55; Fed. Cas. No. 1889), and until given, proceedings will, on motion, be stayed. (The Geo. Parker, 1 Flipp. 606; Fed. Cas. No. 5334; The Ping On, 7 Sawy. 483.) None other than parties in the original libel can be joined as parties in the cross-bill. (Ping On v. Blethen, 11 Fed. Rep. 607.) An affidavit that the respondent in a cross-libel cannot give security to the amount of the damages demanded, "without serious embarrassment to his business and great expense and sacrifice," does not show cause for taking less security on a motion under this rule to fix the amount. (Compagnie Universelle du Canal Interoceanique v. Belloni, 45 Fed. Rep. 587.) The object of the rule requiring security is not merely to compel an appearance, but to place the parties on an equality. (Lochmore S. S. Co. v. Hagar, 78 Fed. Rep. 642.) A demand for security on a cross-libel, under pain of staying proceedings on the original libel, should not be granted when filed several months after filing the cross-libel and after the original libelants have taken their testimony. (Franklin Sug. Ref. Co. v. Funch, 66 Fed. Rep. 342.) A cross-libel "arises out of the same cause of action," within this rule, when a libel was filed to recover for injuries to a barge caused by defects in the consignee's dock, and the consignee filed the cross-libel against the barge owners to recover expenses incurred in pumping out the barge and placing her in the dock. (Genthner v. Wiley, 85 Fed. Rep. 797.) A decision denying a demand for security on a cross-libel, on the ground of inexcusable delay in demanding it, is not ordinarily reviewable. (Franklin Sug. Ref. Co. v. Funch, 39 U. S. App. 219; 73 Fed. Rep. 844.) An appeal from an order refusing an application for security, on a

cross-libel, does not suspend the proceedings in the original suit. (Franklin Sug. Ref. Co. v. Funch, 39 U. S. App. 219; 73 Fed. Rep 844.)

RULE 54.

Suits for embezzlement of master, etc.—When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss or destruction by the master, officers, mariners, passengers or any other person or persons, of any property, goods, or merchandise shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation,

with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

It is further ordered that the present heading to this rule be erased.

Original order promulgated May 6, 1872, 13 Wall. xii. Amendment promulgated January 26, 1891, 137 U. S. 711.

Note.—In a proceeding to limit liability, in a collision case, an appraisement ex parte is not void. The above rule does not require prior notice of the appraisement to be given to any one. (Morrison v. District Court, 147 U. S. 14.)

RULE 55.

Proof of claims, before whom made.—Proof of all claims which shall be presented in pursuance of said motion shall be made before a commissioner to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses) shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

Promulgated May 6, 1872. 13 Wall. xiii.

RULE 56.

Who may defend.—In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel, for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act); *provided,* that in his or their libel or petition he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their

claim to the commissioners under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

Promulgated May 6, 1872, 13 Wall. xiii.

RULE 57.

Jurisdiction, where it attaches.—The said libel or petition shall be filed, and the said proceedings had in any district court of the United States in which said ship or vessel may be libeled, to answer for any such embezzlement, loss, destruction, damage, or injury; or if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf.

When the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the district court of the district in which the said ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as hereinbefore provided. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

Original order promulgated May 6, 1872, 13 Wall. xiii. Amendment promulgated April 22, 1889, 130 U. S.

Application of rule.—See The Alpena, 8 Fed. Rep. 280.

RULE 58.

Preceding rules apply on appeal.—All the preceding rules and regulations for proceeding in causes where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the circuit courts of the United States where such cases are or shall be pending in said courts on appeal from the district courts.

Promulgated March 30, 1881, 13 Otto, xiii. See Re Petition of Lord, 31 Fed. Rep. 416.

RULE 59.

Suit for damages.—In a suit for damages by collision, if the claimant of any vessel proceeded against or any respondent proceeded against *in personam,* shall by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damages, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall

answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, to pay to the libelant and to any claimant or new party brought in by virtue of such process, all such costs, damages and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libelant.

Promulgated March 26, 1883, 112 U. S. 743.

Rule of division of damages.—The admiralty rule of division of damages where both vessels are in fault applies to all cases of negligence. (The Alert, 44 Fed. Rep. 685; Steamer Max Morris v. Curry, 137 U. S. 1.) Applied in case of an injury to one employed to load coal, by falling from a steamer's bridge. (Steamer Max Morris v. Curry, 137 U. S. 1.) The rule of division of damages has been applied in the following cases: The Virginia Ehrman, 97 U. S. 309; City of Hartford, 97 U. S. 323; The Civilta, 103 U. S. 699; The Connecticut, 103 U. S. 710; The North Star, 106 U. S. 17; The Sterling, 106 U. S. 647; The Manitoba, 122 U. S. 97; and the earlier cases of Rogers v. Steamer St. Charles, 60 U. S. 108; Chamberlain v. Ward, 62 U. S. 548; The Washington, 76 U. S. 513; The Sapphire, 78 U. S. 164; The Ariadne, 80 U. S. 475; The Continental, 81 U. S. 345; Atlee v. Northwestern U. Packet Co., 88

U. S. 389; The Teutonia, 90 U. S. 77; The Sunnyside, 91 U. S. 208; The America, 92 U. S. 432; The Alabama, 92 U. S. 695; The Atlas, 93 U. S. 302; The Juniata, 93 U. S. 337; The Stephen Morgan, 94 U. S. 599. See The New York, 34 Fed. Rep. 757.) The claimant or respondent in a suit for damages by collision may compel libelant to bring in another vessel or party alleged to have been in fault. (Steamer Max Morris v. Curry, 137 U. S. 1.)

New defendant.—When a new party defendant is brought into a suit, under this rule, by petition of the original defendant, the libelant should answer the petition, the petitioner should answer the libel, and the new party should answer both libel and petition. (The Greenville, 58 Fed. Rep. 805.)

RULES

OF THE

COURT OF PRIVATE LAND CLAIMS.

RULE 1.

Duties of the clerk.—The clerk shall be the custodian of the records of the court. He shall keep the following records at each place at which the regular terms of the court are held, viz., a journal in which he shall record all orders, decrees, and judgments entered by the court, an appearance docket in which he shall enter the title of all claims or causes filed or brought in the court at that place, and in which he shall note the filing of the petition and all pleadings filed subsequent thereto, and a reference showing the journal page of all orders and entries made in the progress of the cause.

He shall also keep a book for the use of the court at each term, in which he shall enter each cause then pending at that place and undisposed of, by its title, leaving sufficient blank space opposite each case for the entry by the court of the memoranda of orders and judgments.

And the clerk shall keep an office at each place, at which the regular terms of court are held. Every cause brought by a claimant of land under the provisions of the sixth and eighth sections of the Act approved March 3, 1891, establishing the court, shall be entitled in the name of such claimant or claimants as plaintiff, against the United States and such other person or persons as may be designated as holding or claiming adversely to the plaintiff as defendant, and such title shall be preserved in the pleadings, and all other papers filed in the cause, and in all journal entries made during its progress, and all writs, citations, and processes issued therein, and all causes brought by instruction of the department of justice as provided by the eighth section of said act, and in all journal entries, writs, citations, and processes therein, the United States shall be designated as plaintiff and the adverse party or parties as the defendant.

The clerk shall keep a roll of attorneys. Any attorney who is a member of the Supreme Court of the United States, or of any Circuit Court of the United States, or of the highest court of the State or Territory in which he resides, shall, upon exhibiting his certificate of admission to the clerk, be entitled to have his name entered upon the roll of attorneys, and to appear in any cause pending before the court.

Actions relating to lands in Wyoming, Nevada, Arizona, or Utah, may, at the election of plaintiff, be brought and presented at either of the places where the regular terms are held.

RULE 2.

As to the filing of petitions, etc.—Every person filing a petition in this court for the confirmation of any claim to land under any grant, shall at the time of filing such petition deliver to the clerk of the court, or the deputy clerk, the original documents constituting or creating such grant, also the original documents of all intermediate assignments or conveyances of any right or interest in such grant evidencing the right so claimed by the petitioner.

If, however, any such original document cannot, for any reason, be delivered as herein required, the reason thereof shall be stated, and if such document be in existence but not under control of petitioner, the name and place of the holder shall be stated, and if it be claimed that any such document be lost or destroyed, the facts and circumstances of such loss or destruction shall be stated. The clerk or deputy so receiving such documents, shall receipt for same, and such document shall not be removed from the custody of this court until the final determination of the confirmation or rejection of such claim. Whenever any original document in any other than the English language shall be delivered to the custody of the court, as herein required, it shall be the duty of the official interpreter to at once translate the same into English in duplicate, one of which shall be filed with the clerk and the other delivered to the United States attorney for this court. Whenever any petitioner shall claim any rights by reason of an in-

heritance by descent, or by testamentary disposition, he shall set forth in his petition the names and citizenship of all deceased persons through whom it is claimed such right is derived, and the names of the heirs of such deceased persons, and shall set forth the law of the place affecting such right of inheritance. And in case any such right depends upon the last will of any deceased person, the petitioner shall, at the time of filing his petition, deliver to the clerk or deputy a copy of such will, together with a copy of the records of the probate thereof, if any such have been had. Upon filing any petition, the petitioner shall, at the time of filing the same, deliver to the clerk or deputy a true copy thereof for each person to be served with such petition.

RULE 3.

Rules as to Pleadings.—Until the further order of this court, the time for pleadings in all cases shall be extended to the third day of the term at which the cause is returnable.

RULE 4.

Witnesses and their testimony.—In all cases witnesses for either party shall be examined in open court upon the trial of the cause, unless they are sick, infirm, or otherwise unable to attend, and in that event either party desiring the testimony of such witness or witnesses shall make application to the court, or any judge thereof, to take the deposition of such witness or witnesses, and if it appears to the satisfaction of the court or judge

that such witness or witnesses ought not to be compelled to appear in court and testify, the court or judge shall make an order allowing the deposition of said wtness or witnesses to be taken. Either party applying for an order to take the deposition as herein provided shall give notice to the adverse attorney of record of the time and place of making such application, at least five days before the day upon which the same is to be made, and shall state the name and residence of each witness whose deposition is desired. The application shall state the name and residence of each witness whose deposition is desired, and what is expected to be proven by each, together with the reasons why such witness should not be required to attend and testify, and the same shall be verified by the oath of some party in interest, or an attorney of record in the cause, and in all cases where an order is made by the court or judge to take the deposition of any witness or witnesses, the time and place of taking such depositions shall be stated in said order.

RULE 5.

Commission, and to whom directed.—The commission to take depositions of any witness or witnesses may be directed to a commissioner of any Circuit Court of the United States, or to any person qualified to take testimony by the laws of the State or Territory in which the same is to be executed. The person to whom the same shall be directed shall be named therein, and the place of his residence shall be given in a manner that he may

be easily found. When the commission shall be directed to an officer of the State or Territory in which it may be executed, a certificate of the official character and authority of such officer from some court or other proper source, shall be returned with it. The manner of certifiying and returning depositions shall be as provided in the laws of the State or Territory where taken.

RULE 6.

Depositions, how opened and filed.—Either party may give five days' notice to the opposite party of his intention to apply to the clerk to open and file depositions which have been returned in the court, and if no objections shall be made in writing within the time specified, such depositions may be published as of course. Objections which may be made as aforesaid shall be set down for hearing before a judge of the court on like notice.

RULE 7.

Attorney for the United States.—The attorney for the United States for this court shall not be required to verify by oath any application or motion made to the court or any judge thereof.

RULE 8.

Rule as to costs.—At the time of filing a petition, all parties other than the United States are required to make a deposit with the clerk, of such sum as he may determine to be necessary to pay the fees of the marshal for serving a copy of the petition and citations.

BANKRUPTCY.

The Bankruptcy Act of 1898.
General Orders in Bankruptcy.

AN ACT

TO ESTABLISH

A UNIFORM SYSTEM OF BANKRUPTCY

THROUGHOUT THE UNITED STATES.

CHAPTER I.

Definitions.

Section 1. *Meaning of words and phrases.*—(a) The words and phrases used in this act and in proceedings pursuant hereto, shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2) "adjudication" shall mean the date of the entry of a decree that the defendant in a bankruptcy proceeding is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "Appellate Courts" shall include the Circuit Courts of Appeals of the United States, the Supreme Courts of the Territories, and the Supreme Court of the United States; (4) "bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a vol-

untary petition, or who has been adjudged a bankrupt; (5) "Clerk" shall mean the clerk of a Court of Bankruptcy; (6) "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) "Court" shall mean the Court of Bankruptcy in which the proceedings are pending, and may include the referee; (8) "Courts of Bankruptcy" shall include the District Courts of the United States and of the Territories, the Supreme Court of the District of Columbia, and the United States Court of the Indian Territory, and of Alaska; (9) "creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney or proxy; (10) "date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this act; (13) "document" shall include any book, deed or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the 22d of February, and any day appointed by the President of the United States or the Congress of the United

States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation, be sufficient in amount to pay his debts; (16) "Judge" shall mean a Judge of a Court of Bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a Court of Bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead; (22) "con-

ceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year; (28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

CHAPTER II.

Creation of Courts of Bankruptcy and their Jurisdiction.

Sec. 2. That the Courts of Bankruptcy as hereinbefore defined, viz: the District Courts of the United States in the several States, the Supreme

Court of the District of Columbia, the District Courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made Courts of Bankruptcy, and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the Courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers,

members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return with instructions for further proceedings, records, and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine

and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaint of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other Courts of Bankruptcy. Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

CHAPTER III.

Bankrupts.

Sec. 3. *Acts of bankruptcy.*—(a) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property

to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b) A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

(c) It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as

defined in this act at the time of the filing of the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision 1 the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency will rest upon him.

(e) Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond, with at least two good and sufficient sureties, who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and

damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court and paid by the obligors in such bond.

Sec. 4. *Who may become bankrupts.*—(a) Any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

(b) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

Sec. 5. *Partners.*—(a) A partnership during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(b) The creditors of the partnership shall ap-

point the Trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

(c) The Court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

(d) The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

(e) The expenses shall be paid from the partnership property and the individual property in such proportions as the Court shall determine.

(f) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

(g) The Court may permit the proof of the claim of the partnership estate against the individual estates, and *vice versa*, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the

equitable distribution of the property of the several estates.

(h) In the event of one or more, but not all of the members of a partnership being adjudged bankrupt the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

Sec. 6. *Exemptions of bankrupts.*—(a) This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Sec. 7. *Duties of bankrupts.*—(a) The bankrupt shall (1) attend the first meeting of his creditors, if directed by the Court or a Judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the Court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the Court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge; (7)

in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in Court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known; if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the Court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than 150 miles distant from his home or principal place of business, or to examine claims except when presented

to him, unless ordered by the Court or a judge thereof for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

Sec. 8. *Death or insanity of bankrupts.*—(a) The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane; *Provided,* That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

Sec. 9. *Protection and detention of bankrupts.*—(a) A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a Court of Bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State Court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a Court of Bankruptcy, or engaged in the performance of a duty imposed by this act.

(b) The Judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he re-

sides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal directing him to bring such bankrupt forthwith before the Court for examination. If upon hearing the evidence of the parties it shall appear to the Court or a Judge thereof, that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released, or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the Court, and for his obedience to all lawful orders made in reference thereto.

Sec. 10. *Extradition of Bankrupts.*—(a) Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a District Court has jurisdiction to another.

Sec. 11. *Suits by and against bankrupts.*—(a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months

after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

(b) The Court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A trustee may, with the approval of the Court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought by or against a trustee of bankrupt estate subsequent to two years after the estate has been closed.

Sec. 12. *Compositions, when confirmed.*—(a) A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

(b) An application for the confirmation of a composition may be filed in the Court of Bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place

as shall be designated by and subject to the order of the Judge.

(c) A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition and such objections as may be made to its confirmation.

(d) The Judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

(e) Upon the confirmation of a composition, the consideration shall be distributed as the Judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

Sec. 13. *Compositions, when set aside.*—(a) The Judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

Sec. 14. *Discharges, when granted.*—(a) Any person may, after the expiration of one month and

within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the Court of Bankruptcy in which the proceedings are pending; if it shall be made to appear to the Judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

(b) The Judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

(c) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

Sec. 15. *Discharges, when revoked.*—(a) The Judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the

knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

Sec. 16. *Codebtors of bankrupts.*—(a) The liability of a person who is a codebtor with, or guarantor, or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

Sec. 17. *Debts not affected by a discharge.*—(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipalty in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

CHAPTER IV.

Courts and Procedure Therein.

Sec. 18. *Process, pleadings and adjudications.*—(a) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein

named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the Courts of the United States, except that it shall be returnable within fifteen days, unless the Judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in Courts of the United States.

(b) The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the Court may allow.

(c) All pleadings setting up matters of fact shall be verified under oath.

(d) If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the Judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and makes the adjudication or dismiss the petition.

(e) If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the Judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f) If the Judge is absent from the district, or the division of the district in which the petition

is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the Clerk shall forthwith refer the case to the referee.

(g) Upon the filing of a voluntary petition the Judge shall hear the petition and make the adjudication or dismiss the petition. If the Judge is absent from the district, or the division of the district in which the petition is filed, at the time of the filing, the Clerk shall forthwith refer the case to the referee.

Sec. 19. *Jury trials.*—(a) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b) If a jury is not in attendance upon the Court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the District Courts within the jurisdiction of a Circuit Court of the United States, it may be certified for trial to the Circuit Court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such Circuit Court has or is to have a jury first in attendance.

(c) The right to submit matters in controversy or an alleged offense under this act, to a jury, shall be determined and enjoyed, except as provided by this act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

Sec. 20. *Oaths, affirmations.*—(a) Oaths required by this act, except upon hearings in Court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the Courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

Sec. 21. *Evidence.*—(a) A Court of Bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the State in which the proceedings are pending, to appear in Court or before a referee or the Judge of any State Court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act.

(b) The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to

the taking of depositions, except as herein provided.

(c) Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

(d) Certified copies of proceeding before a referee or of papers, when issued by the Clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of District Courts of the United States are now or may hereafter be admitted as evidence.

(e) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

(f) A certified copy of an order confirming or setting aside a composition or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the Court, the regularity of the proceedings, and of the fact that the order was made.

(g) A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that

a deed from the trustee to the bankrupt if recorded would impart.

Sec. 22. *Reference of cases after adjudication.*—(a) After a person has been adjudged a bankrupt the Judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon the specified issues; or (2) to any referee within the territorial jurisdiction of the Court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

(b) The Judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

Sec. 23. *Jurisdiction of United States and State Courts.*—(a) The United States Circuit Courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the trustees shall only be brought or prosecuted in the Courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if pro-

ceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

(c) The United States Circuit Courts shall have concurrent jurisdiction with the Courts of Bankruptcy, within their respective territorial limits, of the offenses enumerated in this act.

Sec. 24. *Jurisdiction of Appellate Courts.*—(a) The Supreme Court of the United States, the Circuit Courts of Appeals of the United States, and the Supreme Courts of the Territories, in vacation in chambers and during their respective terms, as now or they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the Courts of Bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.

(b) The several Circuit Courts of Appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

Sec. 25. *Appeals and writs of error.*—(*a*) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the Courts of Bankruptcy to the Circuit Court of Appeals of the United States, and to the Supreme Court of the Territor-

ies, in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the Appellate Court in term or vacation, as the case may be.

(b) From any final decision of a Court of Appeals, allowing for rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States in the following cases, and no other.

1. Where the amount in controversy exceeds the sum of $2,000, and the question involved is one which might have been taken on appeal or writ of error from the highest Court of a State to the Supreme Court of the United States; or

2. Where some justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

(c) Trustees shall not be required to give bond when they take appeals or sue out writs of error.

(d) Controversies may be certified to the Supreme Court of the United States from other Courts of the United States, and the former Court

may exercise jurisdiction thereof, and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Sec. 26. *Arbitation of controversies.*—(a) The trustee may, pursuant to the direction of the Court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the Court shall appoint the third arbitrator.

(c) The written finding of the arbitrators, or a majority of them, as to the issues presented may be filed in Court and shall have like force and effect as the verdict of a jury.

Sec. 27. *Compromises.*—(a) The trustee may, with the approval of the Court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

Sec. 28. *Designation of newspapers.* — (a) Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides, or the major part of his property is situated, in which notices required to be published by this act and orders which the Court may direct to be published shall be inserted. Any Court may in a particular case, for the convenience

of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

Sec. 29. *Offenses.*—(a) A person shall be punished by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property, or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

(b) A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

(c) A person shall be punished by fine, not to exceed $500, and forfeit his office, and the same shall thereupon become vacant, upon conviction

of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the Court so to do.

(d) A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in Court within one year after the commission of the offense.

Sec. 30. *Rules, forms, and orders.*—(a) All necessary rules, forms and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended, from time to time, by the Supreme Court of the United States.

Sec. 31. *Computation of time.*—(a) Whenever time is enumerated by days in this act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

Sec. 32. *Transfer of cases.*—(a) In the event petitions are filed against the same person, or against different members of a partnership, in different Courts of Bankruptcy, each of which has

jurisdiction, the cases shall be transferred, by order of the Courts relinquishing jurisdiction, to and be consolidated by the one of such Courts which can proceed with the same for the greatest convenience of parties in interest.

CHAPTER V.

Officers, Their Duties and Compensation.

Sec. 33. *Creation of two offices.*—(a) The offices of referee and trustee are hereby created.

Sec. 34. *Appointment, removal and districts of referees.*—(a) Courts of Bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

Sec. 35. *Qualifications of referees.*—(a) Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to

any of the judges of the Courts of Bankruptcy or Circuit Courts of the United States, or of the Justices or Judges of the Appellate Courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

Sec. 36. *Oaths of office of referees.*—(a) Referees shall take the same oath of office as that prescribed for Judges of United States Courts.

Sec. 37. *Number of referees.*—(a) Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various Courts of Bankruptcy.

Sec. 38. *Jurisdiction of referees.*—(a) Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in Courts of Bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties

except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on Courts of Bankruptcy and as shall be prescribed by rules or orders of the Courts of Bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed 10 cents per folio for reporting and transcribing the proceedings.

Sec. 39. *Duties of referees.*—(a) Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7)

safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in Courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the Courts of Bankruptcy convene, call upon and receive from the clerks all papers filed in Courts of Bankruptcy which have been referred to them.

(b) Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

Sec. 40. *Compensation of referees.*—(a) Referees shall receive as full compensation for their services, payable after they are rendered, a fee of $10 deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them 1 per centum commissions on sums to be paid as dividends and commissions, or one-half of 1 per

centum on the amount to be paid to creditors upon the confirmation of a composition.

(b) Whenever a case is transferred from one referee to another, the Judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

(c) In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the Judge shall determine what part of the fee and commissions shall be paid to the referee.

Sec. 41. *Contempts before referees.*—(a) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law; *Provided,* That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than 100 miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b) The referee shall certify the facts to the Judge, if any person shall do any of the things forbidden in this section. The Judge shall thereupon, in a summary manner, hear the evidence as

to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the Court of Bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Court.

Sec. 42. *Records of referees.*—(a) The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in Circuit Courts of the United States.

(b) A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

(c) The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the Court of Bankruptcy and shall there remain as a part of the records of the Court.

Sec. 43. *Referee's absence or disability.*—(a) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the Judge may act, or may appoint another referee, or another referee holding an appointment under the same Court may, by order of the Judge, temporarily fill the vacancy.

Sec. 44. *Appointment of trustees.*— (a) The

creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the Court shall do so.

Sec. 45. *Qualifications of trustees.*—(a) Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

Sec. 46. *Death or removal of trustees.*—(a) The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

Sec. 47. *Duties of trustees.*—(a) Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of

the Court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources, and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the Courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the Courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the Court as soon as practicable after their appointment.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

Sec. 48. *Compensation of trustees.*— (a) Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of $5 deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the Courts, not to exceed 3 per centum on the first $5,000 or less, 2 per centum on the second $5,000 or part thereof, and 1 per centum on such sums in excess of $10,000.

(b) In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the Court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

(c) The Court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

Sec. 49. *Accounts and papers of trustees.*— (a) The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

Sec. 50. *Bonds of referees and trustees.*— (a) Referees, before assuming the duties of their offices, and within such time as the District Courts of the United States having jurisdiction shall pre-

scribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such Courts, not to exceed $5,000, with such sureties as shall be approved by such Courts, conditioned for the faithful performance of their official duties.

(b) Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the Court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the Courts, conditioned for the faithful performance of their official duties.

(c) The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the Court shall do so.

(d) The Court shall require evidence as to the actual value of the property of sureties.

(e) There shall be at least two sureties upon each bond.

(f) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g) Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the Courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of referees, trustees and designated depositories shall be filed of record in the office of the clerk of the Court, and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

(i) Trustees shall not be liable, personally or on their bonds, to the United States for any penalties or forfeitures incurred by the bankrupts under this act of whose estates they are respectively trustees.

(j) Joint trustees may give joint or several bonds.

(k) If any referee or trustee shall fail to give bond as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

(l) Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m) Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

Sec. 51. *Duties of clerks.*—(a) Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certi-

fied copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and cannot obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

Sec. 52. *Compensation of clerks and marshals.*—(a) Clerks shall respectively receive as full compensation for their service to each estate a filing fee of $10, except when a fee is not required from a voluntary bankrupt.

(b) Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force,

or such as may be hereafter enacted, fixing the compensation of marshals.

Sec. 53. *Duties of Attorney General.*—(a) The Attorney General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

Sec. 54. *Statistics of bankruptcy proceedings.*—(a) Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney General, for statistical purposes, within ten days after being requested by him to do so.

CHAPTER VI.

Creditors.

Sec. 55. *Meetings of creditors.*—(a) The Court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile

within the United States, the Court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the Court shall fix the date, as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors the Judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

(d) A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

(e) The Court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the Court shall call such meeting at such place within thirty days after the date of the filing of the request.

(f) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

Sec. 56. *Voters at meetings of creditors.*— (a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

(b) Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amount of such claims exceed the values of such securities or priorities, and then only for such excess.

Sec. 57. *Proof and allowance of claims.*—(a) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so, what securities are held therefor, and whether any, and, if so, what payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b) Whenever a claim is founded upon an instrument of writing such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed,

such instrument may be withdrawn by permission of the Court upon leaving a copy thereof on file with the claim.

(c) Claims after being proved may, for the purpose of allowance, be filed by the claimants in the Court where the proceedings are pending or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the Court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the Court upon its own motion.

(e) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the Courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the Court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were de-

livered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the Court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j) Debts owing to the United States, a State, a county, a district, or a municipality as a penalty of forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction or proceeding out of which the penalty of forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

(l) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the Court in the same manner and upon like terms as the claims of other creditors.

(n) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment; *provided*, that the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

Sec. 58. *Notice to creditors.*— (a) Creditors shall have at least ten days notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterward filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy; and (8) the proposed dismissal of the proceedings.

(b) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the Court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the Court shall direct.

(c) All notices shall be given by the referee, unless otherwise ordered by the Judge.

Sec. 59. *Who may file and dismiss petitions.*—(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to $500 or over, or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

(d) If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the Court shall cause all such creditors to be notified of the pendency of such petition and shall delay

the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

(f) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

(g) A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

Sec. 60. *Preferred creditors.*— (a) A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his

creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

(b) If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

(c) If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly, or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the Court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the Court, and the excess may be recovered by the trustee for the benefit of the estate.

CHAPTER VII.

Estates.

Sec. 61. *Depositories for money.*—(a) Courts of Bankruptcy shall designate by order banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time, as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

Sec. 62. *Expenses of administering estates.*—(a) The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the Court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

Sec. 63. *Debts which may be proved.*—(a) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the

time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account or upon a contract expressed or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

(b) Unliquidated claims against the bankrupt may, pursuant to application to the Court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

Sec. 64. *Debts which have priority.*—(a) The Court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the Court.

(b) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt

estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the Court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed $300 to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

Sec. 65. *Declaration and payment of divi-*

dends.—(a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals 5 per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the Judge shall so order.

(c) The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a Court without the United States and also by a Court of Bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the Court without the United States by other creditors before

creditors who have received a dividend in such Court shall be paid any amounts.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act.

Sec. 66. *Unclaimed dividends.*—(a) Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into Court.

(b) Dividends remaining unclaimed for one year shall, under the direction of the Court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

Sec. 67. *Liens.*—(a) Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

(b) Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

(c) A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a

judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act.

(e) That all conveyances, transfers, assignments, or encumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subse-

quent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or encumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

(f) That all levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in

bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt; and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same and shall pass to the trustee as a part of the estate of the bankrupt, unless the Court shall on due notice order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the Court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

Sec. 68. *Setoffs and counterclaims.*—(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A setoff or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge

or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

Sec. 69. *Possession of property.*—(a) A judge may, upon satisfactory proof by affidavit that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

Sec. 70. *Title to property.*—(a) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is

exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trademarks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

(b) All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the Court. Real and personal property shall, when practicable, be sold subject to the approval of the Court; it shall not be sold otherwise than subject to the approval of the Court for less than 75 per centum of its appraised value.

(c) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(d) Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

(e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

(f) Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him.

THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

(a) This act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

(b) Proceedings commenced under State insolvency laws before the passage of this act shall not be affected by it.

(Approved July 1, 1898.)

GENERAL ORDERS IN BANKRUPTCY, 1898.

SUPREME COURT OF THE UNITED STATES.

October Term, 1898.

In pursuance of the powers conferred by the constitution and laws upon the supreme court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered, on this twenty-eighth day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867, and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary

or proper to carry into force and effect the bankrupt act of 1898, and the general orders of this court.

I.

DOCKET.

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

II.

FILING OF PAPERS.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

III.

PROCESS.

All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

IV.

CONDUCT OF PROCEEDINGS.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

V.

FRAME OF PETITIONS.

All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

VI.

PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts,

the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership, for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

VII.

PRIORITY OF PETITIONS.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

VIII.

PROCEEDINGS IN PARTNERSHIP CASES.

Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be

given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

IX.

SCHEDULE IN INVOLUNTARY BANKRUPTCY.

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

X.

INDEMNITY FOR EXPENSES.

Before incurring any expense in publishing or mailing notices, or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

XI.

AMENDMENTS.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

XII.

DUTIES OF REFEREE.

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all

matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a state, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

XIII.

APPOINTMENT AND REMOVAL OF TRUSTEE.

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

XIV.

NO OFFICIAL OR GENERAL TRUSTEE.

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

XV.

TRUSTEE NOT APPOINTED IN CERTAIN CASES.

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

XVI.

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

XVII.

DUTIES OF TRUSTEE.

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

XVIII.

SALE OF PROPERTY.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

XIX.

ACCOUNTS OF MARSHAL.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

XX.

PAPERS FILED AFTER REFERENCE.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

XXI.

PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the postoffice box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory

proof that it will diminish pro tanto the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

XXII.

TAKING OF TESTIMONY.

The examination of witnesses before the referee

may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

XXIII.

ORDERS OF REFEREE.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

XXIV.

TRANSMISSION OF PROVED CLAIMS TO CLERK.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

XXV.

SPECIAL MEETING OF CREDITORS.

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

XXVI.

ACCOUNTS OF REFEREE.

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month.

XXVII.

REVIEW BY JUDGE.

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

XXVIII.

REDEMPTION OF PROPERTY AND COMPOUNDING OF CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

XXIX.

PAYMENT OF MONEYS DEPOSITED.

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made

by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

XXX.

IMPRISONED DEBTOR.

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy,

and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

XXXI.

PETITION FOR DISCHARGE.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

XXXII.

OPPOSITION TO DISCHARGE OR COMPOSITION.

A creditor opposing the application of a bankrupt for his dischage, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

XXXIII.

ARBITRATION.

Whenever a trustee shall make application to the court for authority to submit a controversy arising

in the settlement of demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversey, and the reasons why the trustee thinks it proper and most most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

XXXIV.

COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

XXXV.

COMPENSATION OF CLERKS, REFEREES, AND TRUSTEES.

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies

furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed.

XXXVI.

APPEALS.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act to the supreme court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the supreme court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the supreme court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the supreme court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

XXXVII.

GENERAL PROVISIONS.

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the supreme court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

XXXVIII.

FORMS.

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

Note.—The forms referred to will be found in the book of forms accompanying this work.

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